Babasaheb Dr. B.R. Ambedkar

(14th April 1891 - 6th December 1956)

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Dr. BABASAHEB AMBEDKAR
WRITINGS AND SPEECHES
Vol. 13

Edited

by

Vasant Moon

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Vol. 13

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Kumari Selja

सत्यमेव जयते

Minister for Social Justice and Empowerment
& Chairperson, Dr. Ambedkar Foundation

MESSAGE

Babasaheb Dr. B.R. Ambedkar, the Chief Architect of Indian Constitution was a scholar par excellence, a philosopher, a visionary, an emancipator and a true nationalist. He led a number of social movements to secure human rights to the oppressed and depressed sections of the society. He stands as a symbol of struggle for social justice.

The Government of Maharashtra has done a highly commendable work of publication of volumes of unpublished works of Dr. Ambedkar, which have brought out his ideology and philosophy before the Nation and the world.

In pursuance of the recommendations of the Centenary Celebrations Committee of Dr. Ambedkar, constituted under the chairmanship of the then Prime Minister of India, the Dr. Ambedkar Foundation (DAF) was set up for implementation of different schemes, projects and activities for furthering the ideology and message of Dr. Ambedkar among the masses in India as well as abroad.

The DAF took up the work of translation and publication of the Collected Works of Babasaheb Dr. B.R. Ambedkar published by the Government of Maharashtra in English and Marathi into Hindi and other regional languages. I am extremely thankful to the Government of Maharashtra's consent for bringing out the works of Dr. Ambedkar in English also by the Dr. Ambedkar Foundation.

Dr. Ambedkar's writings are as relevant today as were at the time when these were penned. He firmly believed that our political democracy must stand on the base of social democracy which means a way of life which recognizes liberty, equality and fraternity as the principles of life. He emphasized on measuring the progress of a community by the degree of progress which women have achieved. According to him if we want to maintain democracy not merely in form, but also in fact, we must hold fast to constitutional methods of achieving our social and economic objectives. He advocated that in our political, social and economic life, we must have the principle of one man, one vote, one value.

There is a great deal that we can learn from Dr. Ambedkar's ideology and philosophy which would be beneficial to our Nation building endeavor. I am glad that the DAF is taking steps to spread Dr. Ambedkar's ideology and philosophy to an even wider readership.

I would be grateful for any suggestions on publication of works of Babasaheb Dr. Ambedkar.

Selja

(Kumari Selja)

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FOREWORD

The Government of Maharashtra has made a signal contribution to the study and understanding of the history of modern India by undertaking the monumental task of compiling, editing and publishing the works of Babasaheb Ambedkar. The present volume is the thirteenth in the series they have brought out. It is devoted exclusively to the writings and speeches of Dr. B. R. Ambedkar on the Constitution of India. As Chairman of the Drafting Committee and as the one who piloted this historic document through the Constituent Assembly, he was the principal architect of the Constitution.

Shri T. T. Krishnamachari, a colleague of his in the Drafting Committee, said in one of his speeches in the Constituent Assembly:

> "The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One had died and was not replaced. One was away in America and his place was not filled up, and another person was engaged in State affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happend ultimately that the burden of drafting this Constitution fell upon Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable."

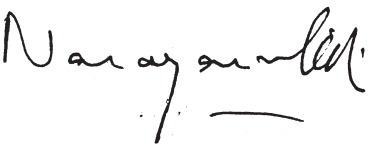
Dr. Ambedkar carried out this herculean intellectual labour "in spite of his indifferent health" as Dr. Rajendra Prasad put it, and "added lustre to the work he has done." His writings and speeches throw floodlight on the principles and ideas behind the Constitution, on its numerous provisions affecting the whole gamut of the life of the nation and the rights and liberties and obligations of the people. To read these to-day is an experience akin to being present at the creation of the Constitution. As Shri R. Venkataraman, the former President of India, said : "Dr. Ambedkar anticipated every conceivable requirement of the new polity." His words light up the context and the intent of the provisions of the Constitution that are periodically being interpreted and re-interpreted by our Courts. They also contain salutary warnings that we must pay heed to if we are to preserve the structure and the spirit of the Constitution, the unity of the nation and the welfare and progress of the people that it was intended to protect and advance.

Pandit Jawaharlal Nehru had described Dr. Ambedkar as "a symbol of the revolt against all the oppressive features of Hindu society." Dr. Ambedkar was indeed a symbol of revolt by all the oppressed and deprived sections of our society, a symbol which is to-day inspiring millions of our people into widespread social and political action. A passionate believer in democracy he also believed that "social and economic democracy are the tissues and the fibre of political democracy". He warned in one of his speeches in the Constituent Assembly that:—"To leave equality between class and class, between sex and sex which is the soul of Hindu society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap." It is this passion for equality and social justice which was expressed in different but equally impassioned forms by Mahatma Gandhi

and Jawaharlal Nehru and embodied in the Constitution that has made Indian democracy not a fragile "palace on a dung heap" but a solid edifice that has stood the stresses and strains of our myriad and massive problems. Dr. Ambedkar's contribution to this was of seminal importance.

It is interesting to recall that Dr. Ambedkar defined democracy as: "A form or method of government whereby revolutionary changes in the economic and social life of the people are brought about without bloodshed." While a revolutionary he was also an uncompromising constitutionalist who advocated that changes, however radical should be effected through constitutional methods and within the constitutional framework. He repeatedly emphasized the paramount need for the diffusion of "constitutional morality" in society, which he held "is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it." In his devotion to the practice of constitutional morality he went to the extent of ruling out even non-violent extra-constitutional methods like "satyagraha" from the politics of post-independent India. He visualized democracy as the "golden mean" the method of the Buddha which in his view was the best and the safest method of action. His vision of India and the future of the oppressed sections and the minorities in the country was in line with this basic philosophy. In one of his important speeches he said : "In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities merge some day into one." He believed that the Constitution drafted under his Chairmanship will serve this double purpose.

Dr. Ambedkar had faith in the Constitution that he helped to fashion for India. "I feel", he said, "that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile." His faith in the future of India and in the people of India was profound. He told the Constituent Assembly, "I know to-day we are divided politically, socially and economically. We are a group of warring camps, and I may even go to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one." Dr. Ambedkar emerges from this Volume not only as a man of immense erudition and foresight, but one who had faith in the people of India and in the future of India under a political system which is at once strictly constitutional and socially and economically progressive.



New Delhi,
April 5, 1994

(K. R. NARAYANAN)
Vice-President of India

PREFACE

Dr. Ambedkar is the prime architect of free India's Constitution which has served the country well for 44 years. A constitution is the grand norm of legislation. Laws made by the Parliament and the State legislatures are examined in the light of the paramount constitutional provisions. Preparation of the Constitution, therefore, is a matter of great importance. The existing constitutional provisions have their roots in the discussions that had taken place in the Constituent Assembly. This perception of the genesis of the Constitution is the first step towards its understanding. Dr. Ambedkar and the Constitution have become synonymous. The present volume contains the Draft Constitution as conceived by him. There have been some amendments afterwards with reference to the changing social context, but the basic features of the Constitution have remained unaltered. The life, liberty and the pursuit of happiness enshrined in the fundamental rights which are available to citizens constitute its basic features and there is the golden thread of humanism and reasonableness in its framework.

The Indian Constitution is a detailed document which takes cognizance of every aspect of the Government. Its detailed character is sometimes assailed by critics as a lawyer's paradise. However, 44 years of its working has shown that the common man is the central theme of the Constitution. The reader will be able to appreciate the present Constitution in the light of the background material which is contained in the present volume. The originality of approach and masterly organisation of details

of principles which we find in the Indian Constitution are the fruits of scholarly research and high pragmatism of Dr. Ambedkar. The volume will be useful to jurists, constitutionalists and lay readers alike and should prove a welcome addition to the literature on and by Dr. Ambedkar.

(Sharad Pawar)
Chief Minister of Maharashtra State

EDITOR'S NOTE

The present volume of speeches and writings of Dr. Ambedkar brings out his pivotal role as the Chairman of the Drafting Committee of the Constitution. It contains the various motions he moved for amendments, his explanation and exposition of principles, his magnanimity in appreciating his opponents point of view and his readiness to change his views in the process. Truly, the volume brings out the quintessential democrat in Dr. Ambedkar who laid the foundation of the democratic edifice of the Government which is the government by discussion and criticism. His colleagues in the Constituent Assembly bestowed on him generous praise and candid approval of his role as the principle architect of our Constitution, and perhaps, Dr. Pattabhi Sitaramayya summed up the sentiments of the Constituent Assembly when he said, "What a steam-roller intellect he brought to bear upon this magnificent task : irresistible, indomitable, unconquerable, levelling down tall palms and short poppies; whatever he felt to be right he stood by, regardless of consequences".

Editing this volume has been an exciting, educative and illuminating experience. While the task has been difficult and every care has been bestowed on including every sentence of Dr. Ambedkar, there could be some shortcomings in comments, clarifications and in footnotes which one hopes would be corrected by frank criticism of readers and suggestions for improvement which will be gratefully acknowledged and deeply appreciated.

The Editor's Note will be incomplete without placing on record the grateful thanks :

* to His Excellency Shri K. R. NARAYANAN, the Vice President of India for the Foreword he has contributed to the present volume.

* to Shri SHARAD PAWAR, Hon. Chief Minister of Maharashtra whose encouragement has made this volume possible;

* to Shri PRABHAKAR DHARKAR, Hon'ble Minister for Education who took keen interest in the project;

* to Shri Navajeevan Lakhanpal, Secretary, Technical and Higher Education whose ready assistance and competent guidance enabled the Editor to resolve many administrative problems;

* to Shri B. M. Ambhaikar, Additional Municipal Commissioner, Municipal Corporation of Greater Bombay and Dr. Narendra Jadhav, Director, Department of Economic Analysis and Policy of the Reserve Bank of India for advice, suggestions and guidance in editing this volume.

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* to Dr. Keshao Phalkey, State Liaison Officer, Mantralaya and Shri J. M. Abhyankar, Dy. Director of Education, Greater Bombay for clearing various administrative

problems; Professor Pramod Ramteke and Shri Vijay Survade for sparing the illustrations; and members of the staff of the Education Department, *viz.* Shri Ravindra Sutar and Smt. S. M. Nevrekar who cheerfully typed and verified the material.

Last but not the least, the Members of the Committee who stood by the Editor in all those arduous assignments and reposed their confidence in him and there are of course many nameless admirers and well-wishers imbued with the philosophy and spirit of Dr. Ambedkar who helped the Editor in every way and whose names are too many and too numerous to be mentioned here.

Scholarship means essentially a collective enterprise and the Editor hopes that he would profit by the collective wisdom of criticism and suggestions coming from all quarters.

Bombay :
April 14, 1994

(Vasant Moon)
Editor

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ERRATA

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442	16	negatived	adopted
449	29	word used is wjckd (Pradhan)	word used is (Pradhan)
375	21	though	thought
489	15	(Speech of N. A.)	substitute asterisks
504	29	inheres	inherent
538	Foot Note	*p. 1349	*p. 1347
566	8	Nagiruddin	Naziruddin
586	21	partically	practically
601	4	the articles speaking for myself	the articles relating to the Auditor-General in this House, assigns to him. Personally speaking for myself
606	3	Tahi	Tahir
783	18	Article 253 (contd.)	delete
822	2	withdraw	withdrawn
834	———	———	Put 'Article 284' as title
847	31	Bhopender Singh	Bhoopender Singh
888	(note in bracket)	Das were withdraw	Das was withdrawn
923	29	"That in entry 50 of List II the words 'or roads' be added at the end".	delete
1018	27	whome	whom
1163	1	englosing	eulogising
1168	19	Brabhu Dayal	Prabhu Dayal
1178	19	Mr. President	delete
Index	Under R	Round Table, a book	Round Table, a magazine

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Jawaharlal Nehru

B. Pattabhi Sitaramayya

H. Gopalaswami

G. P. Ramasamy Reddy

Hladi Krishna Swami Iyer

Amrit Swaminadhan

T. Prakasam

T. Santhanam

Alladi Krishnaswami Iyer

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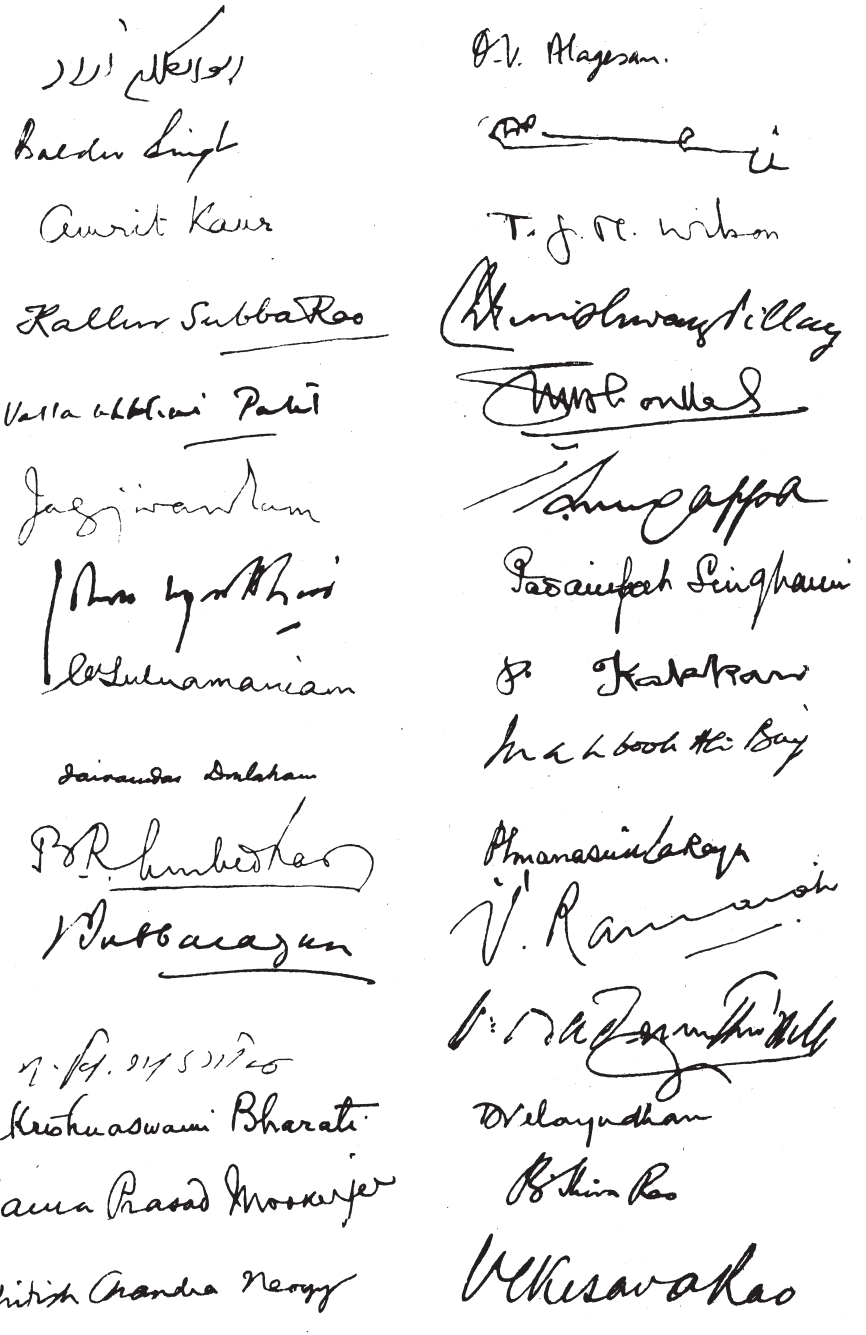

PART I

From Dr. Ambedkar's entry into the Constituent Assembly to the presentation of the Draft of the Indian Constitution to the Constituent Assembly

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SECTION ONE

December 9, 1946 to July 31, 1947

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Resolution regarding Aims and Objects

[*After the end of the second world war in 1945, the question of India's freedom assumed priority. The British Government sent three-men delegation to India to suggest the ways and means for the smooth transfer of power. This delegation, called Cabinet Mission, announced on 16 March 1946 its proposals in which, it was suggested that a Constituent Assembly be set up to frame a Constitution for the future governance of India.*

Accordingly elections to the Constituent Assembly were held in which members were elected by the Provincial Legislative Assemblies. Dr. Ambedkar, having failed to get elected from Bombay due to Congress opposition, managed to enter the Constituent Assembly through the Bengal Assembly with the support of Jogendranath Mandal and other Scheduled Caste members.

The Constituent Assembly started its work of framing free India's Constitution on 9th December 1946. In all 296 members were entitled to take part in the inaugural session. But only 207 attended, the absentees were mainly the Muslim League members who had boycotted the Constituent Assembly.]

The first meeting of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi on Monday, the 9th December 1946, at Eleven of the Clock.

Acharya J. B. Kripalani requested Dr. Sachchidanand Sinha to take the chair as temporary Chairman. The Chairman gave an inaugural address to the House. This was followed by nomination of Shri Frank Anthony as the Deputy Chairman.

The members then presented the credentials and signed their names in the register. Dr. B. R. Ambedkar signed as a member from Bengal.

The Assembly passed the rules for the election of the Chairman of the Constituent Assembly on 10th December 1946. The Assembly thereafter elected Dr. Rajendra Prasad as permanent Chairman of the Assembly on 11th December 1946.

On 13th December 1946, the Hon'ble Pandit Jawaharlal Nehru moved the resolution regarding Aims and Objects as under:—

"*(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

(2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom ; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people ; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law ; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality ; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes ; and

(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and

(8) This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

[*This was followed by speeches by Pandit Nehru, Purushottam Das Tandon and the Chairman, Dr. Rajendra Prasad. The Assembly then adjourned till 16th December 1946.*—Ed]

* * * * *

[Dr. M. R. Jayakar, moved his amendment to the above resolution on 16th December 1946.—Ed.]

†The Right Hon'ble Dr. M. R. Jayakar (Bombay General)**:** Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

"This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a

*Constituent Assembly Debates (Hereinafter called CAD.), Vol 1, 13th December 1946, p. 59.

†CAD, Vol. I, 16th December 1946, p. 73.

free and democratic Sovereign State ; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage,—the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present……..

[*Dr. M. R. Jayakar objected to the timing of the resolution. He moved an amendment, seeking postponement of the passing of the resolution, as he wanted the Muslim League to join the task of laying down the fundamentals of the Constitution. This resolution created a tense atmosphere in the House. Amidst this tense situation Dr. Ambedkar was invited by the President Dr. Rajendra Prasad unexpectedly to have his say on 17th December 1946. When Dr. Ambedkar started, the House was all attention.*

Dr. Dhananjay Keer writes, " Everybody thought that Dr. Ambedkar by playing such dangerous role would go under with the mover of the amendment to rise against the will and the objections of the Congress bosses, who were the nation's most powerful leaders, was to meet one's Waterloo. The Congress members were ready with their hands raised to cripple their avowed enemy and throw him down". This historic speech changed the course of Dr. Ambedkar's political career. The speech drew the longest and the most vociferous applause. As Mr. N. V. Gadgil, an eye-witness to this event observed "His speech was so statesmanlike, so devoid of bitterness and so earnestly challenging that the whole of Assembly listened to it in rapt silence. The speech was greeted with tremendous ovation and he was smothered with congratulations in the lobby". The speech had its ultimate effect and the Constituent Assembly postponed the considertion of the objective resolution till the next session. The said speech of Dr. Ambedkar is as under.—Ed.]

***Mr. Chairman :** Dr. Ambedkar.

Dr. B. R. Ambedkar : (Bengal : General) : Mr. Chairman, I am indeed very grateful to you for having called me to speak on the Resolution. I must however confess that your invitation has come to me as a surprise. I thought that as there were some 20 or 22 people ahead of me, my turn, if it did come at all, would come tomorrow.

*CAD, Vol. I, 17th December 1946, pp. 99-103.

I would have preferred that as today I have come without any preparation whatsoever. I would have like to prepare myself as I had intended to make a full statement on an occasion of this sort. Besides you have fixed a time limit of 10 minutes. Placed under these limitations, I don't know how I could do justice to the Resolution before us. I shall however do my best to condense in as few words as possible what I think about the matter.

Mr. Chairman, the Resolution in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is non-controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution hot being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Rights of Man and the principles which are embodied in it has become part and parcel of our mental makeup. I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity. To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental rights set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the day and when the Executive may take one view another Executive may take another view and we do not know what exactly

would be the position with regard to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made.

Now I come to the first part of the Resolution, which includes the first four paragraphs. As I said from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centred on the use of that word 'Republic'. It is centred on the sentence occurring in paragraph 4 "the sovereignty is derived from the people". Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know to-day we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (*Applause*): With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people (*Cheers*). I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even for them. (*Loud cheers and applause*).

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this country to take on to road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans, let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that road, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May the 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly? Today my friend. Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution inconsistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended to bring about the result or not, whether it is a result of cold calculation or whether it is a mere matter of accident is bound to have the result of keeping the Muslim League out. In this connection I should like to invite your attention to Paragraph 3 of the Resolution, which I think

is very significant and very important. Paragraph 3 envisages the future constitution of India. I do not know what is the intention of the mover of the Resolution. But I take it that after this Resolution is passed, it will act as a sort of a directive to the Constituent Assembly to frame a constitution in terms of para. 3 of the Resolution. What does paragraph 3 say ? Paragraph 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para, in the light of the Cabinet Mission's Statement or reading it even in the light of the Resolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping (*hear, hear*) I like a strong united Centre, (*hear, hear*) much stronger than the Centre we had created under the Government of India Act of 1935. But, Sir, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself consented, if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 150 years of administration and which I must say, was to me a matter of great admiration and respect and refuge. But having given up that position, having said that we do not want a strong centre, and having accepted that there must be or should be an intermediate polity, a sub-federation between the Union Government and the Provinces I would like to know why there is no reference in para. 3 to the idea of grouping. I quite understand that the Congress Party, the Muslim League and His Majesty's Government are not *ad idem* on the interpretation of the clause relating to grouping. But I always thought that,—I am prepared to stand corrected if it is shown that I am wrong,—at least it was agreed by the Congress Party that if the Provinces which are placed within different groups consent to form a Union or Sub-federation, the Congress would have no objection to that proposal. I believe I am correct in interpreting the mind of the

Congress Party. The question I ask is this. Why did not the Mover of this Resolution make reference to the idea of a Union of Provinces or grouping of Provinces on the terms on which he and his party was prepared to accept it ? Why is the idea of Union completely effaced from this Resolution ? I find no answer. None whatever. I therefore say in answer to the two questions which have been posed here in this Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mookherjee as to how this Resolution is inconsistent with the Statement of May 16th or how this Resolution is going to prevent the Muslim League from entering this Constituent Assembly, that here is para. 3 which the Muslim League is bound to take advantage of and justify its continued absentation. Sir, my friend Dr. Jayakar, yesterday, in arguing his case for postponing a decision on this issue put his case, if I may say so, without offence to him, somewhat in a legalistic manner. The basis of his argument was, have you the right to do so ? He read out certain portions from the Statement of the Cabinet Mission which related to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting in deciding upon this Resolution straightaway was inconsistent with the procedure that was laid down in that Paper. Sir, I like to put the matter in a somewhat different way. The way I like to put it is this, I am not asking you to consider whether you have the right to pass this Resolution straightaway or not. It may be that you have the right to do so. The question I am asking is this. Is it prudent for you to do so ? Is it wise for you to do so ? Power is one thing ; wisdom is quite a different thing and I want this House to consider this matter from the point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The answer that I give is that it would not be prudent, it would not be wise. I suggest that another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one party or the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. It is because I feel that it would in the interest not only of this Constituent Assembly so that it may function as one whole, so that it may have the reaction of the Muslim League before it proceeds to decision that

I support Dr. Jayakar's amendment—we must also consider what is going to happen with regard to the future, if we act precipitately. I do not know what plans the Congress Party, which holds this House in its possession, has in its mind ? I have no power of divination to know what they are thinking about. What are their tactics, what is their strategy, I do not know. But applying my mind as an outsider to the issue that has arisen, it seems to me there are only three ways by which the future will be decided. Either there shall have to be surrender by the one party to the wishes of the other—that is one way. The other way would be what I call a negotiated peace and the third way would be open war. Sir, I have been hearing from certain members of the Constituent Assembly that they are prepared to go to war. I must confess that I am appalled at the idea that anybody in this country should think of solving the political problems of this country by the method of war. I do not know how many people in this country support that idea. A good many perhaps do and the reason why I think they do, is because most of them, at any rate a great many of them, believe that the war that they are thinking of, would be a war on the British. Well, Sir, if the war that is contemplated, that is in the minds of people, can be localised, circumscribed, so that it will not be more than a war on the British, I probably may not have much objection to that sort of strategy. But will it be a war on the British only ? I have no hesitation and I do want to place before this House in the clearest terms possible that if war comes in this country and if that war has any relation to the issue with which we are confronted to-day, it will not be a war on the British. It will be a war on the Muslims. It will be a war on the Muslims or which is probably worse, it will be a war on a combination of the British and the Muslims. I cannot see how this contemplated war be of the sort different from what I fear it will be. Sir, I like to read to the House a passage from Burke's great speech on Conciliation with America. I believe this may have some effect upon the temper of this House. The British people as you know were trying to conquer the rebellious colonies of the United States, and bring them under their subjection contrary to their wishes. In repelling this idea of conquering the colonies this is what Burke said:—

> "First, Sir permit me to observe, that the use of force alone is but temporary. It may subdue for a moment; but it does not remove the necessity of subduing again ; and a nation is not governed which is perpetually to be conquered.
> "My next objection is its uncertainty. Terror is not always the effect of force and an armament is not a victory. If you do not succeed, you are without resource for, conciliation failing, force remains ; but, force failing, no further

hope of reconciliation is left. Power and authority are sometimes bought by kindness; but they can never be begged as alms by an impoverished and defeated violence……

"A further objection to force is, that you impair the object by your very endeavours to preserve it. The thing you fought for is not the thing which you recover ; but depreciated, sunk, wasted and consumed in the contest".

These are weighty words which it would be perilous to ignore. If there is anybody who has in his mind the project of solving the Hindu-Muslim problem by force, which is another name of solving it by war, in order that the Muslims may be subjugated and made to surrender to the Constitution that might be prepared without their consent, this country would be involved in perpetually conquering them. The conquest would not be once and for ever. I do not wish to take more time than I have taken and I will conclude by again referring to Burke. Burke has said somewhere that it is easy to give power, it is difficult to give wisdom. Let us prove by our conduct that if this Assembly has arrogated to itself sovereign powers it is prepared to exercise them with wisdom. That is the only way by which we can carry with us all sections of the country. There is no other way that can lead us to unity. Let us have no doubt on that point.

* * * * *

Interim Report on Fundamental Rights

***The Hon'ble Pandit Hirday Nath Kunzru :** ... That Government is faced with an extraordinary difficult problem and clause 8(*e*) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which have to be clearly defined.

Dr. B. R. Ambedkar (Bengal : General)**:** I do not wish to interrupt the speaker; but in dealing with clause 8(*e*)†, he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras : General)**:** Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hirday Nath Kunzru : As a parliamentarian, Sir, you understand what I am doing. As regards Dr. Ambedkar's objection, I may say—and I am sure you will bear me out,—I read out the entire clause including the proviso.

Mr. President : I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

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*CAD, Vol. Ill, 29th April 1947, p. 402.

† Clause (e) read as under ;—"*Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.*".—Ed.

* * * * *

CLAUSE 11.—RIGHTS OF FREEDOM

***The Hon'ble Sardar Vallabbhai Patel :** Clause 11 is as regards forced labour and it reads :

"11. (*a*) Traffic in human beings, and

(*b*) Forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence."

Explanation—

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".

* * * * *

† **Dr. B. R. Ambedkar** (Bengal : General) : The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, none-the-less, the State will have the right to introduce compulsory military service. I have not had sufficient time to apply my mind to the consequences of the proposed change, *i.e.,* the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because '*begar*' is also something which is imposed by the State. So far as I know, in Bombay, '*begar*' is demanded by the State for certain public purpose, and if the State is prohibited from having 'begar' it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory

*CAD, Vol. III, 1st May 1947, p. 478

†*Ibid.,* Vol. III, 1st May 1947, p. 480.

service either for military purposes or for social purposes for the State. My suggestion would be that at this stage we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered when the Provincial Constitution and the Federal Constitution are drafted in their final form.

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***Dr. B. R. Ambedkar :** May I make a suggestion ? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that, just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small Committee to have it further examined, it will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to take a correct decision in the matter.

Mr. President : I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R. K. Sidhwa (C.P. and Berar : General) **:** The question regarding compulsory military service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the same committee to which the other clause has been remitted.

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*CAD, Vol. III. 1st May 1947, pp. 483-84.

An Hon'ble Member : The whole clause 11.

Mr. President : Yes, the whole clause 11.

The clause was remitted.

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CLAUSE 17

***The Hon'ble Sardar Vallabhbhai Patel :** Sir, I move Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi : Sir, I beg to move the following amendment:

"That for clause 17 substitute the following clause:
Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law' "

* * * * *

†Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans ? Are they not going to have any kind of religion ? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them ? It seems to me that, if the clause as

*CAD, Vol. III, 1st May 1947, p. 488.

†*Ibid.,* Vol. III, 1st May 1947, pp. 501-2

worded by Mr. Munshi was adopted, *viz.,* that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.,* children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately ; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children ? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law ? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage ? What is to be the effect of that marriage ? Is that marriage legal or not legal ?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

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[*The clause was referred back to the Advisory Committee.*—Ed.]

CLAUSE 18—CULTURAL AND EDUCATIONAL RIGHTS

***The Hon'ble Sardar Vallabhbhai Patel :** I move clause 18 now.

"(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsory on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

*CAD, Vol. III, 1st May 1947, p. 503.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces : General) **:** Sir, with your permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President : Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

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***Mr. K. M. Munshi :** I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

†Dr. B. R. Ambedkar : Mr. President, Sir, I confess that I am considerably surprised at these amendments—both by Mr. Munshi as well as Mr. Tyagi. They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal—one can sense—is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference, I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgement and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter

*CAD, Vol. III. 1st May 1947, p. 504.

†*Ibid.,* pp. 507-8.

of admission into State educational institutions. We have said that "no minority shall be precluded from establishing any educational institution which such minority may wish to establish". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee, I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

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***Mr. President :** Now, there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

Report of the Union Constitution Committee
Clause 3

Mr. K. M. Munshi : I move that the following clause be substituted for the original clause :—

> "Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person's birth, a citizen of

*CAD. Vol. III. 2nd May 1947, p. 526.

the Union, and every person naturalised in the union shall be a citizen of the Union.

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

The reasons have already been given fully in the Report of the *Ad Hoc* Committee. I have nothing to add to it.

Sri K. Santhanam : Sir, I move that the following be added at the end of the first paragraph of this clause:

"Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union."

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***Dr. B. R. Ambedkar** (Bombay : General) : Mr. President, Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, "every person born in the Union". Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, but who are born before the Union has come into being ? In my judgment, in order to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an idea. The new clause shall have to be something like this :

"All persons born in India, as defined in the General Clauses Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union."

I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

Mr. President : A suggestion has been made that the whole clause be held over for further consideration.

Mr. R. K. Sidhwa : This is not a matter for lawyers only. This question has a bearing on every ordinary person.

Mr. President : The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting.

(Clause 3 was held over).

Clause 24

***The Honourable Sir N. Gopalaswami Ayyangar :** Sir, I move Clause 24:

> "24. The superintendence, direction and control of all elections, whether Federal or Provincial, held under this constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

The object of this clause, Sir, is to ensure as far as possible that elections in the country, Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and post-election activities will be regulated and controlled.

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†Dr. B. R. Ambedkar (Bombay : General) **:** Mr. Vice-Chairman, I think it is desirable that I should state to the House the origin of this clause.

Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the Executive of the day. Many people felt that if the elections were conducted under the auspices of the Executive authority and if the Executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the Executive authority and to hand it over to some independent authority. Although Clause 23 does not specifically refer to the details of the scheme that was considered in the Fundamental Rights Committee, I should like to state to the House that the Scheme that was in the minds of the members of the Fundamental Rights Committee was that there would be a Central Commission appointed by the President in order to deal with the elections throughout India. Although that was the scheme contemplated

*CAD. Vol. IV, 29th July 1947, p. 915.

†*Ibid.,* pp. 917-18.

that there should be a Central Commission appointed by the President to superintend, direct and control elections, it was never contemplated that there would be only one Commission sitting in Delhi or at some centre where the Central Government was seated. The scheme was that there would be one Central Commission which probably would deal with the elections to the Federal Parliament but that the Commission would have also subordinate to it a Commission in each Province or, if a Provinces was too small to have a single commission, for two or three provinces combined together, so that their affairs so far as elections were concerned, may be carried on by a Local Commission. From the very beginning the idea was that this thing should be decentralized. There should be one Central Commission for Federal election and there should be several Commissions for the elections conducted in the various Provinces. My submission is this that if that scheme comes into operation, the point which my friend Mr. Pataskar has in mind in moving the amendment would be gained, because so far as I understood from him, what he wanted was that there should be a local authority or a Local Commission which would deal and be concerned with elections in that Province. I think that was our intention although that scheme has not been mentioned in Clause 24. That undoubtedly was the matter we had in mind. However, if my friend Mr. Pataskar still persists in putting his amendment through, I would like to ask him one question which remains a matter of doubt when you read the amendment as drafted by him. He wants to omit the words 'all elections' and substitute the words 'all-Federal elections'. I have no very great objection to his amendment provided he satisfies me on one point. I want to ask him whether or not he accepts the principle—and after all what we are concerned with is the principle—what I want to ask him is this—does he accept the principle that elections should be placed in the hands of an independent body outside the executive ? If he accepts that, personally, as I said, I will have no objection if it is agreed by the House that a similar clause which is contained in Clause 24 be introduced in the Provincial Part of the Constitution. I have no desire for centralization. What we had in mind was that the elections should be taken out of the hands of the Government of the day.

[*The Cabinet Mission had recommended the setting up of an advisory committee on Fundamental Rights, Minorities etc. Accordingly, the assembly constituted the Advisory Committee under the Chairmanship*

of Sardar Patel by a resolution on 24th January 1947. The Committee consisted of 50 members in which Dr. Ambedkar was one. To facilitate its work, the Advisory Committee appointed the following four subcommittees.

1. *Fundamental Rights sub-committee.*
2. *Minorities sub-committee.*
3. *North-East Frontier Tribal Areas sub-committee.*
4. *Excluded and partially excluded areas (other than those in Assam) sub-committee.*

Dr. Ambedkar was a member of the first two sub-committees and took keen interest in their deliberations. He also submitted a memorandum to the Fundamental Rights sub-committee in which he gave concrete shape to his ideas. This memorandum was later published for wider circulation under the title 'States and Minorities, what are their rights and how to secure them in the Constitution of free India'.

The Constituent Assembly also appointed three other committees, namely (1) the Union Power Committee, (2) the Union Constitution Committee and (3) the provisional Constitution Committee. Prime Minister Pandit Jawaharlal Nehru was the Chairman of the first two committees while the third one was under the Chairmanship of Sardar Vallabh Bhai Patel. These Committees were set up by a resolution on 30th April 1947.

Dr. Ambedkar was member of the Union Constitution Committee. The report of the Committee was submitted to the President of the Assembly by its Chairman Pandit Nehru on 4th July 1947. The work done by Dr. Ambedkar in various sub-committees of the Assembly was considered very useful and convinced the Congress bosses beyond doubt that the legislation and solidification of freedom would not be easy without the services of Dr. Ambedkar. Consequent upon the partition of Bengal, Dr. Ambedkar ceased to be a member of the Constituent Assembly. The Congress Party which had earlier opposed tooth and nail his entry into the Constituent Assembly came forward and sponsored his candidature.

In his letter dated 30th June 1947, Dr. Rajendra Prasad, President of the Constituent Assembly requested Mr. B. G. Kher, the then Prime Minister of Bombay to elect Dr. Ambedkar immediately. He wrote, "Apart from any other consideration we have found Dr. Ambedkar's work both in the Constituent Assembly and the various committees to which he was appointed to be of such an order as to require that we

should not be deprived of his services. As you know, he was elected from Bengal and after the division of the Province he has ceased to be a member of the Constituent Assembly. I am anxious that he should attend the next session of the Constituent Assembly commencing from the 14th July and it is therefore necessary that he should be elected immediately".

Accordingly, Dr. Ambedkar was re-elected in July 1947 from Bombay as a member of the Constituent Assembly. Soon after, Prime Minister Nehru invited him to join the Cabinet he formed on 15th August 1947 on the eve of independence. Dr. Ambedkar accepted the invitation and became India's first Law Minister. On 29th August the Assembly unanimously elected him as Chairman of the Drafting Committee which was assigned the task of framing the Constitution. Dr. Ambedkar, who was a strong opponent of Congress had now become their friend, philosopher and guide in the Constitutional matters.—Ed.)

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SECTION TWO

August 14, 1947 to February 25, 1948

BLANK

COMMITTEE TO SCRUTINISE DRAFT CONSTITUTION

***Shri Satyanarayan Sinha :** Sir, I beg to move—

"This Assembly resolves that a Committee consisting of—

(1) Shri Alladi Krishnaswami Ayyar,

(2) Shri N. Gopalaswami Ayyangar,

(3) The Honourable Dr. B. R. Ambedkar,

(4) Shri K. M. Munshi,

(5) Saiyid Mohd. Saadulla,

(6) Sir B. L. Mitter,

(7) Shri D. P. Khaitan,

be appointed to scrutinise and to suggest necessary amendment to the Draft Constitution of India prepared in the Office of the Assembly on the basis of the decision taken in the Assembly".

(The motion was adopted—Ed.)

REPORT OF THE CONSTITUENT ASSEMBLY FUNCTIONS COMMITTEE

†**The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, I beg to move that this Assembly do proceed to take into consideration the Report on the functions of the Constituent Assembly under the Indian Independence Act, 1947, submitted by the Committee appointed by the President in pursuance of the decisions of the Assembly on the 20th August 1947.

Sir, the Report of the Committee has already been circulated to the Members of the House and, I do not think that, at this stage, when the Report has been in the hands of the Members at least for the last two days, I need expatiate at great length upon the work of this Committee. I think it would be enough if I, in the first instance, draw attention to the recommendations of the Committee.

Altogether the Committee has made five recommendations. Its first recommendation is that it is open to the Constituent Assembly to

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*Constituent Assembly Debates, (Hereinafter called CAD.) Official Report, Vol. V, dated 29th August 1947, pp. 293-94.

†*Ibid.,* pp. 310-12.

function as Legislature and that it should function as such; (2) that while functioning as Legislature it should adopt the rules of the Legislative Assembly as far as possible with necessary amendments ; (3) the necessary amendments should be made under the orders of the President of the Constituent Assembly ; (4) the work of the Constituent Assembly as a Constitution-making body and as an ordinary legislature should be separated and should be conducted in separate sessions to be held on separate days ; (5) the power of prorogation should vest in the President and not in the Governor-General as found in the Adaptation of the Government of India Act. After having made these recommendations, the Committee considered whether there were any difficulties which would stand in the way of giving effect to their recommendations and found three which they had to resolve in order to give effect to their recommendations.

The first was whether one and the same person should preside over both the bodies, the Constituent Assembly and the Legislature. This difficulty arose because section 22 of the Government of India Act, which related to the office of the Speaker, has been dropped by the Adaptations which have been carried out under the Indian Independence Act with the result that the President is the one person who has to preside over both, the Constitution-making body as well as the Legislature. Ordinarily speaking, this should not create any difficulty, but in the circumstance where for instance the President is a Minister of the State, this difficulty may arise. For instance, it would be an anomalous thing if the President who is a Minister of State also were to preside over the Constituent Assembly when it was functioning as a law-making body. Consequently the Committee thought that either of two courses has to be adopted ; either the President should cease to be a Minister, or, if he continues to be a Minister, the Assembly should elect another officer to be called the Speaker or Deputy President whose functions it would be to preside over the Constituent Assembly when it is in session for the purpose of making laws.

The second difficulty which the Committee came across was with regard to the representatives of the States. The House will remember that the Constituent Assembly, when it will be meeting for the purposes of law making, would be operating upon the whole field which has been included in List No. 1 of the Seventh Schedule to the Government of India Act. The House also will recall that the States at the present moment have joined the Constituent Assembly on a basis of what is

called the Instrument of Accession which does not altogether tally with the subjects included in List No. 1. In fact the subjects included in the Instrument of Accession fall considerably short of the subjects included in List No. 1. The question, therefore, that arises is this, whether a body of people, who are Members of the Constituent Assembly and who are bound by the Instrument of Accession and have responsibility for a shorter number of items, should be permitted to take part in motions and in debates relating to certain other subjects which were not included in the list contained in the Instrument of Accession. There were of course two ways of dealing with this matter. One way of dealing with this matter was to adopt the procedure of what is called 'in and out', that they should sit in the Assembly and vote when an item which was being debated was common to both the Instrument of Accession as well as List No. 1, and when an item was being discussed in the House which did not form part of the Instrument of Accession, they should not be permitted to participate. The Committee came to the conclusion that although theoretically the second course was more logical, from a practical point of view such a distinction need not be made in the circumstances in which we stand and, therefore, the Committee made the recommendation that notwithstanding the subjects contained in List No. 1 and the Instrument of Accession, the representatives of the Indian States should continue to take part in all motions that may relate to all subjects irrespective of the distinction between the two lists.

The third question which the Committee felt they had to deal with was the position of the Ministers. As the House knows, there are certain Ministers who are at present not Members of the Constituent Assembly. They are live in all who fall in that category. The question therefore arises for consideration whether the Ministers who are members of the Constituent Assembly should take part in the proceeding of the Constituent Assembly and also in the Legislature. So far as their participation in the work of the Legislature is concerned, the position is safeguarded by reason of the fact that Section 2 sub-clause (2) of the Government of India Act is retained by the Adaptation and Members of the House know under the provisions contained in Section 10 sub-clause (2) a person, notwithstanding the fact that he is not a Member of the Legislature, may still continue to participate in the work of the Legislature and be a Minister. Under that, therefore, the Ministers who are not Members of the Constituent Assembly will be eligible to sit

in the Constituent Assembly when it functions as a Legislature, without ceasing to be Ministers of State.

The question that remains is, what is to happen with regard to their relationship to the Constituent Assembly. At present, as they are not Members of the Constituent Assembly, they are not entitled to participate in the work of the Constituent Assembly so far as it relates to the making of the Constitution. The Committee came to the conclusion that it was necessary that their guidance should be available to the Constituent Assembly in the matter of constitution-making and therefore just as Section 10 sub-clause (2) permits them to participate in the work of the Legislature, so also the Constituent Assembly should make a provision which would permit Members of Government who are not Members of the Constituent Assembly also to participate in the work of the Constituent Assembly.

Sir, there are two other matters about which the Committee has made no recommendation and it is necessary that I should refer to them. The first matter is the question of double membership. As the House knows there are certain Members of the Constituent Assembly who are also Members of the Provincial Legislature. So far there is no anomaly, because the Constituent Assembly is not a Legislature. But when the Constituent Assembly begins to function as a Legislative Body, this conflict due to double membership will undoubtedly arise. I might also draw attention to the provision contained in Section 68 (2) of the Government of India Act which deals with this matter. Section 68 (2) did not permit a member to hold double membership of two Legislatures, the Central or Provincial. But this provision has now been dropped by the adaptation. Consequently, it is permissible for Members of the Constituent Assembly when they are functioning as Members of the Legislature also to be Members of another Legislative Body. The anomaly, of course, purely and from a strictly constitutional point of view does remain. It is for the Constituent Assembly to decide whether they will accept the principle embodied in the omission of Section 68 (2) and permit double membership or whether notwithstanding the dropping of Section 68 (2) they will take such suitable action as to prevent double membership.

Second question about which the Committee has made no recommendation is relating to the administrative organization of the Assembly. As the administrative organization in the Assembly is a single unified organization, it is under the exclusive control of the

President of the Constituent Assembly. So long as the Constituent Assembly had only this single and solitary function to perform, namely, to prepare the constitution, there was no difficulty in this matter. But when the Constituent Assembly will function in its double capacity, once as the Constitution-making body and another time as a law-making body with another person at the head of it, namely, the Speaker or the Deputy Speaker, questions with regard to the adjustment of the staff may arise. But the Committee thought that they were not entitled under the terms of reference to deal with this matter and therefore did not make any reference to it at all.

Sir I do not think it is necessary for me to take the time of the House any more than I have done. I think what I have said will sufficiently remind Members of what the Committee has done and will enable them to proceed to deal with the report in the best way they like.

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***Mr. President :** I think we have had enough discussion on this, I would now call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar : Mr. President, the report made by the Committee obviously has received a mixed reception. Some members of the House have described it as a messy document. I do not propose to give any reply to those who have described the Report in those terms, because personally I think that the arguments advanced by them do not deserve sufficient consideration. All that I propose to do in reply is to meet some technical points which have been raised by my friends Dr. Deshmukh and Mr. Biswanath Das. Dr. Deshmukh refers to two recommendations made by the Committee. One was the recommendation relating to the permission to be granted to the Members representing the States for taking part in all the deliberations of the Committee. The second recommendation to which he referred was the recommendation in respect of the Ministers of the State to whom the Committee said it might not be desirable to permit to take part also in the proceedings of the Assembly. Dr. Deshmukh said that all that the Committee observed was logical or convenient. The Committeee did not say whether this was constitutional. I am very much surprised at the question particularly because Dr. Deshmukh happens to be a lawyer. As a matter of fact he ought to have realised that we have really no constitution at all. The Constituent Assembly is making a Constitution, and anything that the Constituent Assembly does would

*CAD, Official Report, Vol. V, 29th August 1947, pp. 327-31.

be constitutional (*Hear, hear*). If the Constituent Assembly say that the State representatives should not take part that would be perfectly constitutional. If the Constituent Assembly said that they should, that would also be perfectly constitutional. Therefore that sort of observation I thought was entirely misplaced. With regard to the point raised by my friend Mr. Biswanath Das, I also feel a considerable amount of surprise that he should have thought fit to make the observations he made. If I remember correctly what he said, his observations related to two points. He said that the Committee was dividing the Constituent Assembly into two parts, that it was an indivisible body, that it was functioning as an integral, one whole. Well, I do not know whether he is not in a position to appreciate that the working of a constitution is quite different from the making of ordinary law. The distinction, it seems to me to put it in a nutshell, is that the Constituent Assembly is not bound by the Constitution. But a Legislature is bound by the Constitution. When the Constituent Assembly functions as a Legislature it would be bound by the Government of India Act as adapted under the Independence Act. Anybody would be in a position to raise a point of order. Anybody would be in a position to say whether a particular motion is *ultra vires* or *intra vires*. But such a question can certainly not arise when the Constituent Assembly is functioning as a body framing the Constitution. And I thought that was a sufficiently substantial distinction to enable us to understand notionally at any rate that the two functions were different, that the purposes were different, that the work was different and if we are intending to avoid confusion, the practical way of doing so would be let the Constituent Assembly meet in a separate session as distinct from a legislature. He also raised some grouse against the adaptations. Now, I must frankly say that no one here is responsible for the adaptations that have been introduced in the Government of India Act, 1935.

If he refers to section 8 sub-clause (1) of the Indian Independence Bill, he will realise that under that section the power of adapting the Government of India Act of 1935 to suit the new status, which the Constituent Assembly has as a legislature, has been vested entirely in the Governor-General. I think it is possible that the Governor-General did take advice from some source in order to decide what adaptations to introduce. Therefore, at the present moment, nobody is responsible for it. If the Constituent Assembly is not satisfied with the adaptations which have been introduced in the Government of India Act, the very same Section 8 sub-clause (1). states that the Constituent Assembly

would be perfectly within its competence to change the adaptations and to introduce any other that it may like. I therefore, submit, Sir, that there is no substance in the points that have been raised by the crities of the Committee.

One other point to which my friend Mr. Krishnamachari referred. He said that Mr. Munshi's resolution omitted to take into account the second part of the report which dealt with the question that the President was the sole authority both on the deliberative and administrative side. He questioned why the resolution which has been framed and submitted to us by Mr. Munshi, practically accepting all the proposals of the Committee did not contain this particular provision. I should like to say that if Mr. Krishnamachari reads the report carefully, he will find that that particular part of the report is an observation on the part of the Committee and not a recommendation and therefore, I submit my friend Mr. Munshi was perfectly justified in not referring to it.

Pandit Lakshmi Kanta Maitra : Sir, I want to ask Dr. Ambedkar certain information. First of all I want to know from him…… etc.

An Honourable Member : Is it a speech or a question ?

Mr. President: I would remind Pandit Maitra that he cannot make a speech. He has put the question and Dr. Ambedkar will answer if he chooses.

An Honourable Member : Even the question is out of order.

Pandit Lakshmi Kanta Maitra : Why is it not permissible ? When the Honourable member replies to the debate and an Honourable member does not understand, he is perfectly within his right in asking further questions to get points cleared up.

Mr. President: You have put the question. Dr. Ambedkar will reply.

The Honourable Dr. B. R. Ambedkar : I shall be brief. The first question was whether we contemplate any change in the adaptations of the Government of India Act. My answer is that that is a matter for the House to determine what adaptations the House wants. But I want to assure my friends here that we have got the power to change the adaptations. The Government of India Act with its adaptations is not entirely binding on us in the sense that a change is not beyond our purview. If the House, on a reconsideration of the matter, finds that certain adaptations ought to be changed, it would be perfectly possible to undertake that provision.

The second question which my Honourable Friend Mr. Maitra put to me was whether the unity of administration is likely to be affected and there is likely to be a conflict in view of the fact that there may be two offices, one President presiding over the Constituent Assembly and secondly a Speaker presiding over the legislative body. What the

Committee has said is that there is a theoretical possibility of conflict. But I take it that there need not necessarily be a conflict. In practice, it should be perfectly possible tor the two offices, the President and the Speaker of the Assembly to work in union and to so arrange the timing of the Constituent Assembly as well as the legislative body in perfect order so that notwithstanding the fact that we have two offices, we need not be afraid that there would necessarily be a conflict.

With regard to the third question, obviously, the arrangement that we are making now for the purpose of converting the Constituent Assembly into a legislative body, undoubtedly will be temporary. It would last so long 4s the function of Constitution-making has not been completed. When the function of Constitution-making is completed, obviously one or the other arrangement would vanish and we shall then continue only to function as a legislature.

Mr. Naziruddin Ahmad : One more question. The Honourable member has said that re-adaptation may be made by the House. Is it possible for the Governor-General to make further adaptations ?

The Honourable Dr. B. R. Ambedkar : It is a question of law. This House has power to change the adaptation.

Mr. Naziruddin Ahmad : I do not deny that. That question is whether in the opinion of the Honourable member, the Governor-General can make further adaptation.

The Honourable Dr. B. R. Ambedkar : He cannot, because he will have to act on the advice of his Ministers.

Mr. Naziruddin Ahmad : Whether he can do so on the advice of his Ministers ?

An Honourable Member: Is this a law court, or a cross examination.

The Honourable Dr. B. R. Ambedkar : I am not sure and I do not like to give an offhand answer.

Mr. President : I think we have to put the motion clause by clause as was suggested.

[Clause by Clause motions were adopted. Thereafter the resolution as under was adopted.—Ed.**]**

Mr. President : The question is :

That the Resolution as a whole be adopted, namely:

"1. That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that—

(i) The functions of the Assembly shall be—

(a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and

(b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

(ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.

(iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.

(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.

(vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work, of Constitution-making though until they become members of the Constituent Assembly they should not have any right to vote.

(vii) Necessary modifications, adaptations and additions should be made—

(a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.

(b) the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule".

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ADDITIONAL REPRESENTATION TO EAST PUNJAB

***Mr. President :** Just to avoid longer discussion may I make a statement with regard to the procedure that has been followed in connection with this particular resolution ? The matter came up before the Steering Committee and the Steering Committee felt that it was necessary to refer it to a very small committee to go into these figures. This committee consisted of—

Dr. B. R. Ambedkar,

Diwan Chaman Lall,

Giani Gurmukh Singh Musafir,

Mr. Rafi Ahmed Kidwai, and

Mr. Ananthasayanam Ayyangar,

and after taking into consideration all these figures and such information as was available with regard to the migration of population from one side to the other the Committee made certain recommendations on the basis of which the Resolution has come before the House. The matter has been considered by a Sub-Committee which I had appointed on the recommendation of the Steering Committee. Of course it is open to the House to accept it or not. I thought I had better explain that

*CAD, Official Report, Vol. VI, 27th January 1948,, p. 9.

position. I am sorry that the report of that Sub-Committee not been circulated and only the Resolution has been circulated. If that report had been before the members probably much of the discussion might have been avoided but that has not been done. I am sorry.

ADDITION OF NEW RULES 38-A TO 38-V

***Shrimati G. Durgabai** (Madras : General) : Mr. President, Sir, I beg to move the motion that stands in my name, namely :—

> That the following amendments to the Constituent Assembly Rules be taken into consideration :—
>
> After Rule 38, insert the following :—
>
> The proposed Rules lay down in a Chapter, Chapter VI-A, the procedure for legislation for making provision as to the Constitution of India. They spread over above 22 Sections from 38-A to 38-B, and are divided into two categories.

[This motion was followed by discussion. Then Dr. Ambedkar rose to reply to the criticism.—Ed.)

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†The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. President, Sir, I rise to explain some of the criticisms which have been levelled by Mr. Santhanam against the Motion moved by Shrimati Durgabai proposing the adoption of certain Rules by this Constituent Assembly. One of the criticisms levelled against her proposal is by Mr. Santhanam. Mr. Santhanam's main criticism is that the existing Rule 24 is quite sufficient for the purpose we have in view and that no new Rules are necessary. I am sure that Mr. Santhanam has not given enough attention to the question when he rose to oppose the motion. Rule No. 24 speaks of a motion and says that anything can be done in this House by a Motion. That is quite true. But I am sure that Mr. Santhanam has failed to realize that this omnibus Rule will not suffice and that further detailed Rules are necessary. For motions fall into two categories. There is a motion which has no further stage; it is exhausted by the decision taken by the House on that particular motion. But there is also another category of motions which involve further stages. A particular illustration of a motion of this sort is a motion introducing a Bill. A Bill which is introduced by a motion is not

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*Constituent Assembly Debates, Official Report. Vol. VI, 27th January 1948, p. 18.

† *Ibid,* pp. 25-28.

exhausted by that particular motion if the House decided in favour of that motion. There are further stages which have to be gone through and it is therefore very necessary that the further stages of a motion of this sort should be regulated by specific rule. I think if my friend Mr. Santhanam had referred to the Constituent Assembly (Legislative) Rules he could have seen that the provision which has been made in the new rules which was moved by Shrimati Durgabai was modelled on the provisions contained in the rules and the standing orders of the Constituent Assembly. For instance, he will find that analogous to Rule No. 24 in the rules of the Constituent Assembly there is Standing Order No. 30 worded exactly in the same terms as Rule No. 24. Notwithstanding that, there is a further Standing Order *i.e.* No. 37, which provides for bills and which lays down what further motions can be moved in the House with regard to them and therefore, on that footing the proposal made for adopting the new rule is in line with the procedure adopted by the Constituent Asesmbly in its legislative capacity. I should think that if the Constituent Assembly rested purely on rule No. 24 for carrying out its business in so far as it related to legislation, there is not the slightest doubt in my mind that there would be utter chaos. If there was only Rule 24 there could be no limit as to the number of motions or the nature of motions that one could move. In the Legislative Assembly rules Honourable Members will find that after a Bill has been introduced there are only three motions which are permitted. One is motion to circulate, motion to refer the Bill to a Select Committe or motion to pass the Bill. If we had nothing but Rule 24 to govern our proceedings it would be open for any member to move any sort of motion which he may fancy. Indeed it would be necessary in certain cases not to allow freedom to move anyone of these three motions. In our procedure for the purpose of passing the Bill embodying our new constitution we have curtailed the list of motions that could be moved by a member. In the new rules proposed we have not permitted a motion for the circulation of the constitution because we think that would be dilatory. In short what is important to bear in mind is that unless these rules were adopted, it would be quite impossible to control the further stages of the Bill and therefore the point raised by Mr. Santhanam is, I think, a point without substance.

The other point of criticism levelled by Mr. Santhanam relates to one of the new Rules which requires the assent of the Governor-General to the passing of a Bill adopted by the Constituent Assembly. As the Members of this House will remember, the Committee, which reported on the bifurcation of the functions of the Constituent Assembly into (1) Constituent Assembly for making laws relating to the Constitution and (2) Dominion Legislature for making ordinary law, divided the work of the Constituent Assembly into two parts, one part related to the making of the *future* constitution and the other relating to the amending of the existing Constitution as contained in the Government of India Act, 1935, and the Indian Independence Act of 1947. With regard to its power to make and pass the future Constitution the Governor-General has no place. His assent is not necessary. The Constituent Assembly is supreme. Not merely is the assent of the Governor-General not necessay, but even the assent of the President is not required by the Rules now prepared. The only power which the President has been given after the Constitution has been passed by this Assembly is to sign it merely as a token that that is the final Act of Constitution. It is not assent in the ordinary sense of the word. The assent of the Governor-General has been retained with regard to the amendment of the existing constitution. I know there are certain members who feel hurt that such a provision should have been retained. But, I will tell the House that this matter was considered by the best lawyers that were available and they all came to the conclusion that the retention of the assent of the Governor-General was not only desirable but necessary. I should like to explain the reasons. In the first place, as everybody knows, the Governor-General possesses the power of adapting the Constitution. Adaptation is merely another name for amending the Constitution. There is not much difference between adapting the Constitution and amending the Constitution. They are just one and the same thing. The question that arises is that if it is necessary that the Governor-General should have the power to amend the Constitution in the form of adapting it. What harm can there be if the power was retained with regard to a Bill as distinguished from adaptation which has the same purpose, namely, the amendment of the Constitution.

Shri K. Santhanam : May I know why then you want the Bill at all?

The Honourable Dr. B. R. Ambedkar : The answer is simple, after all, the power of adaptation will be exhausted by the 31st of March. What is to happen thereafter if the necessity for amending the existing Constitution arose ? Of course if the power of adaptation comes to an end, on the 1st of April and if our future Constitution also became operative on the 1st of April, the problem would not arise at all. There would be the new Constitution taking complete possession of the territory occupied by the existing Constitution. But, we are not quite sure that such would not be the case. It may be there might be a time lag between the commencement of the new Constitution and the first of April 1948. It may be a month or two may elapse between the 31st of March and the commencement of the Constitution. It is also equally clear that the whole of the Constitution as framed and passed by this House may not come into operation all at once. It may come into operation in parts. There may be transitional provisions, supplementary provisions for the purpose of defining constituencies for the purpose of giving effect to what are called incidental matters. All that requires undoubtedly some time. Consequently, the process of adapting the Constitution which will come to an end by the 31st March will have to be continued and it can be continued only by the known process of a Bill passed by this House.

In the light of this it will be clear that a provision for changing the exiting Constitution by a Bill is necessary. Those who realize this fact and also realize that the purpose of adaptation is the same as that of the Bill amending the Constitution cannot question the validity of the provision for requiring the Governor-General's assent to the Bill. If the purpose of both is the same and if adaptation requires assent of the Governor-General, the question that arises is, why should a Bill of amendment not require the assent of the Governor-General ? Certainly, there is no logical inconsistency at all. I may further point out that the committee was to a large extent guided by the provision contained in sub-clause (3) of section 6 of the Independence Act which says that all laws passed by the Dominion Legislature will be assented to by the Governor-Genenral. What that clause means is a matter of uncertainty today. The Governor-General has the power to assent. The question is, does it mean that the Assembly is bound to submit a Bill amending the existing Constitution to the Governor-General by virtue

of the fact that he is endowed with the power by the Independence Act to give his assent ? We were not able to give any categorical opinion. We thought that notwithstanding feasibility of the argument that merely because of the existence of sub-clause (3) in section 6 there is no obligation to submit the Amending Bill to the Governor-General for his assent, a court of law may hold otherwise and declare an Act passed by this Assembly, not submitted to the Governor-General for assent, as being *ultra vires* and we did not want that legislation passed by this Assembly should be put in that sort of jeopardy. It is therefore out of abundant caution and also out of the feeling that there was nothing illogical in it that we inserted the new Rule. I hope the House will understand that whatever has been done by the Drafting Committee, to which this matter was referred, is perfectly in order and that the points raised by Mr. Santhanam and the friends who followed him have really no substance in them.

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***Mr. President :** Before I put the motion to vote, I would like to ask the Mover whether she would like to say anything in reply.

Shri M. Ananthasayanam Ayyangar : Before that, Sir, I beg your permission to interrupt for a little while. I would like to ascertain from the Honourable Dr. Ambedkar whether he has considered the consequences that would follow if this motion is adopted, because, under Section 32 of the Government of India Act as adapted, the Governor-General has the right either to give or withhold his assent when a Bill is referred to him. Are we contemplating that so far as a Bill seeking to amend the existing constitution is concerned, the Governor-General shall have the power either to give or withhold his consent ?

The Honourable Dr. B. R. Ambedkar : He is a constitutional Governor. He acts on advice.

Shri M. Ananthasayanam Ayyangar : Another point which requires elucidation is this. It is laid down that when the Dominion Legislature pases a Bill, that Bill will require the assent of the Governor-General. But doest this apply in so far as amendment of the present Constitution is concerned, because we are not sitting here as Dominion

*CAD, Official Report, Vol. VI, 27th January 1948, p. 29

Legislature, but as the Constituent Assembly of India which is a sovereign body ? That is why I say you have the power, as President. We do not even say Speaker here. Does the Honourable Dr. Ambedkar realise that just as the new Constitution is not going to be referred to the Governor-General, the amendment of the existing Constitution also need not be referred to him ?

Mr. President : That is a point which Dr. Ambedkar has answered in his own way. Whether the member is satisfied or not is a different question. I shall now call upon the Mover if she wishes to say anything in reply.

Shrimati G. Durgabai : Mr. President, Sir, I do not think there is much left for me to say in reply, because Dr. Ambedkar has very kindly taken upon himself to explain the whole position as well as answer the points raised by my Honourable friends. I think he has sufficiently met them and clarified the whole position, but I appreciate that much has been said by some of the members about the provision retained here about the assent of the Governor-General with regard to Bills referred to in 38-A. Dr. Ambedkar dealt with that point also, so I need not say much about it, but I would like to remind Honourable members of this fact that we are governed today by the 1935 Act as adapted which still retains that provision……..

[The motion of Smt. Durgabai was adopted.—Ed.**]**

Mr. President : Mr. Naziruddin Ahmad can move his amendment.

Mr. Naziruddin Ahmad : Sir, I beg to move—

> That in the proposed rule 38-B, for the words "Introduce a Bill" the words "Introduce such a Bill" he substituted.

Sir, this amendment is necessary because the Bill is qualified in the earlier part of the clause and the addition of the word "such" will make it very clear.

The Honourable Dr. B. R. Ambedkar : Sir, if I may reply to this point. If the Honourable Mover will only refer to the heading of the chapter he will see that the chapter is called "Legislation for making provision as to the Constitution of India". These rules relate to no other Bill except the Bill amending the Constitution. Therefore the word "such" is absolutely unnecessary.

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*CAD, Official Report, Vol. VI, 27th January 1948, pp-32-33.

Mr. Naziruddin Ahmad : After this clarification, Sir, I beg leave to withdraw.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Dr. B. R. Ambedkar : Sir, If I may make a suggestion with a view to economise time. These are all drafting amendments. If this House were to pass a resolution that all these amendments should be taken into consideration by the official draftsmen and incorporated wherever he thinks necessary, that will be better. If we were to take up the amendments one by one, it will take more than a whole day. After all different people use different language for the purpose of conveying the same thought. It is better to leave it to the draftsmen who are particularly qualified in this matter than laymen who merely want to exercise their time in this matter.

[Rule 38-B was adopted.—Ed.**]**

[*The Drafting Committee first met on August 30, 1947 and elected Dr. Ambedkar as its Chairman unanimously. The Committee sat from October 27, 1947 day to day, discussing and revising articles of the Draft prepared by the office of the Constitutional adviser. The Committee met in all on 44 days till February 13, 1948 in which Dr. Ambedkar himself conducted all the business. Fresh Draft of the Constitution as settled by the Drafting Committee was submitted to the President of the Assembly on February 21, 1948. The Committee continued to function and dealt with suggestions for amendments made from time to time. The Draft Constitution had been before the public for eight months and came up before the Constituent Assembly for discussion on 4th November 1948.*—Ed.]

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SECTION THREE

November 4, 1948 to November 9, 1948

BLANK

FIRST READING OF THE DRAFT CONSTITUTION

The Constituent Assembly of India met in the Constitution Hall, New Delhi on Thursday the 4th November 1948.

After completing the formalities of presentation of credentials, signing the register and taking the pledge, the President, Hon'ble Dr. Rajendra Prasad addressed the Members to rise in their seats to pay homage and reverence to the Father of the Nation. He described Mahatma Gandhi as one, 'who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom'.

The Members stood up in silence.

Thereafter, the deaths of Quaid-E-Azam Mohamed Ali Jinnah, Shri D. P. Khaitan and Shri D. S. Gurung, were also mourned by standing in the seat and observing silence.

At the outset the Assembly discussed the Motion moved by Smt. G. Durgabai from Madras which was the amendment to Constituent Assembly Rules 5-A & 5-B. This was accepted by the House.

Then the President, Dr. Rajendra Prasad rose and addressed the House. He explained what would be the programme of the business. This was followed by discussion.

In the afternoon session, the President called upon Dr. Ambedkar to move his motion. Accordingly, Dr. Ambedkar introduced the Draft Constitution to the Assembly for consideration.

After the Draft Constitution was presented to the Constituent Assembly on 4th November 1948, a brief general discussion followed, which is called the first reading of the Constitution. The second reading commenced on 15th November. 1948. In the

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second reading the Constitution was discussed clause by clause in detail. The discussion concluded on 17th October 1949.

The Constituent Assembly again sat on the 14th November 1949 for the third reading. This was finished on the 26th November1949 when the Constitution was declared as, passed and there after the President of the Assembly signed it.

The Draft Constitution is placed in this part as Annexure. It will help the reader to understand the clauses and the discussion thereon by referring to the original articles.

—Editor

Draft Constitution—Discussion

MOTION *re* DRAFT CONSTITUTION

Mr. President : I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more

*Constituent Assembly Debates, (Hereinafter called CAD.) Official Report, Vol. VII, 4th November 1948, pp. 31-44.

than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet The criticism that has been levelled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly (1) Report of the Committee on Chief Commissioners Provinces (2) Report of the Expert Committee on Financial Relations between the Union and the States, and (3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

Turning to the main question. A student of Constitutional Law, if a copy of a Constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of Government that is envisaged in the Constitution ; and secondly, what is the form of the Constitution ? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of

the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so, so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions—(1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive,

the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament, through Questions, Resolutions, No confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history—one is called Unitary and other Federal. The two essential characteristics of a Unitary Constitution are : (1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrary wise, a Federal Constitution is marked : (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the

Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of differences between the American Federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favouritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required ; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own

citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the States. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the State Governments are loosely connected. In describing the relationship between the Federal and State Governments in the U.S.A. Bryce has said:

> "The Central or National Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government ? Some idea of this distinctness may be obtained from the following facts :

> 1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.
>
> 2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce :

> "A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the differences between the American Federation and the proposed Indian Federation. But there are some other

special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the offer hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary State. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge. (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other Federations. Federalism is described as a weak if not an effective form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and *vice versa* is a breach of the Constitution and (2) such breach is a justiciable matter to he determined by the Judiciary only. This being the nature of federalism, a Federal Constitution cannot escape the charge of legalism. These faults of a Federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides."

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify in the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provision are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided a resolution is passed by the Upper Chamber by $^{2}/_{3}$rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two-thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced

chaos in many Federal States. One has only to imagine twenty different laws—if we have twenty States in the Union—of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the Slate but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all the basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

(1) a single judiciary,

(2) uniformity in fundamental laws, civil and criminal, and

(3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U.S.A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code. Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act. Laws of Marriage, Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a Federal system as I said is followed in all Federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one

exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India Service recruited on an All-India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognized all over the world. Given these facts all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said that:

> "The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable ; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendency for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own." (*Hear, hear*).

While everybody recognizes the necessity of the diffusion of the Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to prevent the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the

one described by Grote, the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality ? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village Panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic (*laughter*). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country ; and why ? Their part in the destiny of the country has been well described by Metcalfe himself who says :

> "Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maharatha, Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them ? That they have survived through all viscisitudes may be a tact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism ? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done, in this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this two-fold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland." Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against

minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics Fundamental Rights are not Fundamental Rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the Fundamental Rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gitlow Vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said :

> "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is agreed that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so, it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation, if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the Judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every State has inherent in its police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

> "That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question....."

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What

one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these

directive principles possess will be realized better when the forces of right contrive to capture power.

This it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions lo the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as lo how they should exercise their powers. Bui that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency lo make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another son of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free lo create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and. I submit quite indefensible.

This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision winch may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces ; and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some 20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them.

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I feel hopeful that my appeal will hot go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a Federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the

same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them, those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislatures, Central and Provincial. It is only for amendments of specific matters—and they are only few—that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simple method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament, if it met as a Constituent Assembly, its members, will be acting as partisans seeking to carry amendments to the Constitution to facilitate to the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

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I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the Constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C.P., West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the Constitution and in Madras to Article 226. But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move.

[*After the speech of Dr. Ambedkar, members of the Constituent Assembly rose and spoke on the Draft Constitution. Here are some excerpts eulogising the work of Dr. Ambedkar and the Drafting Committee*—Ed.]

***Mr. Frank Anthony** (C.P. and Berar : General) : Mr. President, Sir, although Dr. Ambedkar is not present in the House I feel that, as a lawyer at least. I ought to congratulate him for the symmetrical and lucid analysis which he gave us of the principles underlying our Draft Constitution. Whatever different views we may hold about this Draft Constitution. I feel that this will be conceded that it is a monumental document at least from the physical point of view, if from no other point of view. And I think it would be churlish for us not to offer a word of special thanks, to the members of the Drafting Committee, because I am certain that they must have put in an infinite amount of labour and skill to be able to prepare such a vast document.....

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†Lastly I wish to endorse the sentiment expressed by Dr. Ambedkar when he commended the provisions on behalf of the minorities. I know that it is an unsavoury subject (after what India has gone through) to talk of minorities or in terms of minority problems. And I do not propose to do that I do not propose to commend these minority provisions, because they have already been accepted by the Advisory Committee ; they have been accepted by the Congress Party ; they have also been accepted by the Constituent Assembly. But I feel I ought to thank and to congratulate the Congress Party for its realistic and statesmanlike approach to this not easy problem ; and I feel we ought particularly to thank Sardar Patel for his very realistic and statesmanlike approach. There is no point in blinking or in shirking the fact that minorities do exist in this country, but if we approach this problem in the way the Congress has begun to approach it. I believe that in ten years there will be no minority problem in this country. Believe me, Sir, when I tell you that I, at any rate, do not think that there is a single right minded minority that does not want to see this country reach, and reach in the shortest possible time, the goal of a real secular democratic State. We believe—we must believe—that in the achievement of that go allies the greatest guarantee of any minority section in this country. As Dr. Ambedkar has said, we have struck a golden mean in this matter. The minorities too have been helpful.....

*CAD, Vol. VII. 5th November 1948. p. 227.

†*Ibid.,* pp. 227-29.

Asterisk and dots indicate the portion omitted.—Ed.

Finally Sir, I wish to say that it is not so much on the written word of the printed Constitution that will ultimately depend whether we reach that full stature, but on the spirit in which the leaders and administrators of the country implement this Constitution of ours and on the spirit in which they approach the vast problems that face us; on the way in which we discharge the spirit of this Constitution will depend the measure of our fulfilment of the ideals which we all believe in.

***Shri Krishna Chandra Sharma** (United Provinces : General) : I join in the pleasant task to compliment Dr. Ambedkar for the well worked out scheme he has placed before the House, the hard work he was put in, and his yesterday's able and lucid speech.

Sir, in considering a Constitution we have to take note of the fact that the Constitution is not an end in itself. A Constitution is framed for certain objectives and these objectives are the general good of the people, the stability of the State and the growth and development of the individual. In India when we say the growth and development of the individual we mean his self realisation, self-development and self-fulfilment. When we say the development of the people we mean to say a strong and united nation.....

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†Shri T. T. Krishnamachari (Madras : General) **:** Mr. President, Sir, I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time I do realise that that amount of attention that was necessary for the purpose of drafting a Constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this Constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. But my point really is that the attention that was due to a matter like

*CAD, Vol. VII, 5th November 1948, p.229.

†*Ibid.* pp. 231-32.

this has not been given to it by the Committee as a whole. Some time in April the Secretarial of the Constituent Assembly had intimated me and others besides myself that you had decided that the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee, at any rate the members thereof, and a few other selected people should meet and discuss the various amendments that had been suggested by the members of the House and also by the general public. A meeting was held for two days in April last and I believe a certain amount of good work was done and I see that Dr. Ambedkar has chosen to accept certain recommendations of the Committee, but nothing was heard about this committee thereafter. I understand that the Drafting Committee—at any rate Dr. Ambedkar and Mr. Madhava Rau—met thereafter and scrutinised the amendments and they have made certain suggestions, but technically perhaps this was not a Drafting Committee. Though I would not question your ruling on this matter, one would concede that the moment a Committee had reported that Committee became *functus officio,* and I do not remember your having reconstituted the Drafting Committee……..

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***Shri Biswanath Das** (Orissa : General) **:** Mr. Vice-President. Sir, I rise to thank the Honourable Dr. Ambedkar for the brilliant analysis of the Constitution that he presented to the Constituent Assembly. Sir, I equally thank his colleagues who laboured hard for six long months to forge the Constitution that is presented to this House…….

†**Shri H. Das** (Orissa : General) : Mr. Vice President. Sir, at the outset I must pay my tribute to the Drafting Committee that did a greatly arduous work and put into shape and form the Constitution Bill which we are considering today and which we have to alter according to our will, so that a proper sovereign Constitution will be designed for India. While I pay my tribute to Dr. Ambedkar and his colleagues, I must also pay the tribute that your advisers deserve……..

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‡**Shri Lokanath Misra** (Orissa : General):…….Sir, this Constituent Assembly which represents the sovereignty of India and which is supposed to give shape and form and prestige to our freedom is here deliberating on a Constitution that is supposed to be the guardian of our future. With that end in view, our leaders have laboured enough

*CAD. Vol. VII. 5th November 1948. p. 237.

†*Ibid*., p 239.

‡*Ibid.,* p. 240.

and hard and have produced a Draft Constitution which we are now going to discuss.

Sir, my first point is this : that although Dr. Ambedkar has delivered a very brilliant, illuminating, bold and lucid speech completely analysing the Draft Constitution.....

.... I would have taken some more time to X-ray the speech of Dr. Ambedkar. I bow down to his knowledge. I bow down to his clarity of speech. I bow down to his courage. But I am surprised to see that so learned a man so great a son of India knows so little of India. He is doubtless the very soul of the Draft Constitution and he has given in his Draft something which is absolutely un-Indian. By un-Indian I mean that however much he may repudiate, it is absolutely a slavish imitation of—nay much more—a slavish surrender to the West.

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***Kazi Syed Karimuddin** (C.P. and Berar : Muslim) : Mr. President, Sir. I congratulate Dr. Ambedkar for the introduction of the motion for the consideration of the Draft Constitution of India. The speech that he delivered was a remarkable one and I am sure that his name is bound to go down to posterity as a great constitution-maker.....

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†**Prof. K. T. Shah** (Bihar: General) : Sir. I have to join in the chorus of congratulations that have been offered to the Drafting Committee and its Chairman for the very elaborate Draft Constitution that they have placed before this House. I have particularly to felicitate the Law Minister for the very lucid way in which he has put forward the salient features of the Constitution for our consideration, and given us thought-provoking ideas, with reasons why certain items have been included and why certain others have been put in the manner they have been.....

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‡**Pandit Lakshmi Kanta Maitra** (West Bengal : General) : Sir. I would be failing in my duly if I do not at the very outset congratulate my Honourable friend and old colleague. Dr. Ambedkar for the magnificent performance he made yesterday. The House appreciates the stupendous amount of time and energy he has spent in giving the constitutional proposals a definite shape.....

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*CAD, Vol. VII, 5th November 1948. p. 242.

†*Ibid.,* p. 244.

‡*Ibid.* p. 246.

***Shri Ramnarayan Singh** (Bihar : General) : Sir, I congratulate my Honourable friend Dr. Ambedkar on the opportunity he got of introducing this Constitution Bill and I support his motion…..

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†Dr. F. S. Deshmukh (C.P. & Berar : General) : Sir. I am thankful to you for giving me this opportunity to express my views on the proposed Constitution. The time is limited and therefore my observations can only be of a very general nature. When consideration of the various clauses takes place I shall unfortunately not be present here. I am therefore all the more grateful to have these few minutes.

The speech delivered by my Honourable friend Dr. Ambedkar was an excellent performance and it was an impressive commentary on the Draft that has been presented. As is well known, he is an Advocate of repute and I think he ably argued what was before him. He would perhaps have shaped the Constitution differently if he had the scope to do so. In any case I think he admitted his difficulties fully when he said that after all you cannot alter the administration in a day. And if the present Constitution can be described in a nutshell it is one intended to fit in with the present administration…….

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‡Shri S. Nagappa : Mr. Vice-President, Sir, I join the previous speakers in congratulating the Honourable Chairman of the Drafting Committee and all members of it. They have taken care to see that all aspects of all problems and all the reports of the various committees have been consolidated and looked into……..

Sir, I am one of those who plead for a strong Centre, especially as we all know that we have won our freedom very recently. We require sufficient time to consolidate it and to retain it for all time to come. For another reason also the Centre has to be strong. We have been already divided in so many respects, communally and on religious grounds. Now let us not be divided on the basis of provinces. So, in order to unite all the provinces and to bring about more unity, it is in the country's interests as a whole to have a strong Centre.

Another reason why we should have a strong Centre I will mention presently. Some people say that we should have a strong Centre with a war mentality. I do not think we should have that mentality at all. We have been trained to be non-violent and truthful. These are our principles. When that is the case, there is no likelihood of the Centre having war mentality.

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*CAD, Vol. VII. 5th November 1948. p. 252

†*Ibid*., p 250.

‡*Ibid.,* p.252

The Honourable Dr. Ambedkar, in introducing his report and the Draft Constitution, mentioned that the Constitution was federal in structure but unitary in character. I believe, Sir, especially at this stage we require such a Constitution. We were told that he has borrowed from the Government of India Act. When we find something good in it, we copy it. If we find something useful and suitable to us, to our custom and to our culture, in other constitutions, there is no harm in adopting it.

The minorities have been very well provided for in the Constitution. I am glad about it and the representatives who have been returned to this House to safeguard the interests of the minorities are also glad about it. For this we have to congratulate the majority community. We have to congratulate the majority community for conceding certain special privileges to the minorities……..

Sir, I once again thank the Honourable Dr. Ambedkar for having taken the trouble of drafting this Constitution. No doubt it is an elaborate task but he has done it so successfully and in such a short time.

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***Shri Arun Chandra Guha** (West Bengal : General) : Mr. Vice President, Sir……. Now to the Draft Constitution. I am afraid the Drafting Committee has gone beyond the terms. I am afraid the whole constitution that has been laid before us has gone beyond the main principles laid down by the Constituent Assembly. In the whole Draft Constitution we see no trace of Congress outlook, no trace of Gandhian social and political outlook. The learned Dr. Ambedkar in his long and learned speech has found no occasion to refer to Gandhiji or to the Congress. It is not surprising, because I feel the whole Constitution lacks in Congress ideal and Congress ideology particularly. When we are going to frame a constitution, it is not only a political structure that we are going to frame ; it is not only an administrative machinery that we are going to set up ; it is a machinery for the social and economic future of the nation…….

As for the Fundamental Rights, Dr. Ambedkar,—he is a learned professor and I acknowledge his learning and his ability and I think the Draft Constitution is mainly his handicraft—in his introductory speech, he has entered into a sort of metaphysical debate. He has introduced a new term ; I feel. Sir, there is no right in the world which is absolute. Every right carries with it some obligation ; without obligation there cannot be any right……

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*CAD, Vol. VII, 4th November 1948. pp. 255-56.

Mr. Vice President (Dr. H. C. Mookherjee) **:** Before I call upon the next member to address the House, I have here forty slips of members who wish to speak. The matter is so urgent and so important that I should like everybody to have an opportunity of airing his views on the Draft Constitution. May I therefore appeal to the speakers not to exceed the time-limit which I have fixed as ten minutes ?

***Shri T. Prakasam :** (Madras : General): Sir, the Draft Constitution introduced by Dr. Ambedkar, the Honourable member in charge, is a very big document. The trouble taken by him and those who are associated with him must have been really very great. My Honourable friend Mr. T. T. Krishnamachari, when he was speaking, explained the handicap under which the Honourable Dr. Ambedkar had been labouring on account of' as many as live or six members of the Committee having dropped out and their places not having been filled up.....

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†**Dr. Joseph Alban D'souza** (Bombay : General) : Mr. Vice-President. never before in the annals of the history of this great nation, a history that goes back to thousands of years has there ever been, and probably will there ever be, greater need—nay. Sir, I may even say as much need—as at this most vital and momentous juncture when this Honourable House will be considering clause by clause, article by article, the Draft Constitution for a Free, Sovereign, Democratic Indian Republic—as much need for a quiet and sincere introspection into our individual consciences for the purpose of giving unto Caesar what unto Caesar is due as much need for a keen spirit of fraternal accommodation and co-operation whereby peace, harmony and goodwill will be the hall-marks of our varied existences individually as well as collectively ; as much need for a sufficient breadth of vision so that the complex and the difficult problems that we have to face in connection with this constitutional set-up may be examined primarily from the broader angle of the prosperity and progress of the country as a whole ; and lastly, as much need for an adequately generous and altruistic display of that well-known maxim "Love thy neighbour as Thyself", so that in the higher interests of the nation as a whole, sentimental, emotional, parochial particularisms may not be allowed unduly to influence the decisions of fundamental policy affecting the nation as a whole.

It has been admitted by several Members—particularly by every Member who has spoken before me—that the Draft Constitution is an excellent piece of work. May I say that it is a monumental piece of

*CAD, Vol. VII. 6th November 1948. p. 257.

† *Ibid.,* p. 260.

work put up by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the work of experts, work which is comparative, selective and efficient in character right from the beginning to the end…….

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The Honourable Shri K. Santhanam: ……..The Drafting Committee have done a good job of work, but at the same time I am afraid they cannot escape two valid criticisms. The Committee, I think illegitimately, converted themselves into a Constitution Committee. They have taken upon them selves the responsibility of changing some vital provisions adopted in the open House by this Assembly.....

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†**Shri R. K. Sidhwa** (C.P. & Berar: General): Mr. Vice-President, Sir, as an able and competent lawyer, the Honourable Dr. Ambedkar has presented the Draft Constitution in this House in very lucid terms and he has impressed the outside world and also some of the Honourable Members here, but that is not the criterion for judging the constitution. This is a Constitution prepared for democracy in this country and Dr. Ambedkar has negatived the very idea of democracy by ignoring the local authorities and villages……

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‡**Shri Jainarain Vyas** (Jodhpur) : *Mr. Vice-President, Sir, Dr. Ambedkar and his colleagues as also the typist and copists have to be thanked for the labour expended in preparing the Draft Constitution that is before us. This is a very big Draft and many things have been included in it……

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#**Shri B. A. Mandloi** (C. P. and Berar: General): Mr. Vice-President, Sir, Dr. Ambedkar, Chairman of the Drafting Committee, in a very lucid speech explained the salient points of the Draft Constitution. In answer to the questions which are raised, namely, what is the form of the Government and what is the constitution of the country, he has pointed out that it is a federal type of Government with a strong Centre and a parliamentary system of Government with a single judiciary and uniformity in fundamental laws. He has also said that the emphasis has been placed on responsibility rather than on stability. It is strong enough in peace-time as well as in war-time. He has answered in his speech the various criticisms levelled against the Draft Constitution and

*CAD, Vol. VII, 6th November 1948. p. 262.

†*Ibid.. p.* 265.

‡*Ibid* p. 269.

#*Ibid,* p. 271.

I submit that his peech is a very lucid exposition of the Draft Constitution. The Draft Constitution prepared by the Drafting Committee is based on the reports of the various Committees, namely, the Union Power Committee, the Provincial Constitution Committee, the Advisory Committee and the Minority Committee. The Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader, Pandit Jawaharlal Nehru, and was unanimously passed. We have to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object.

There is another touch-stone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touch-stone is whether it would maintain our freedom, our independence and our democratic, secular Government. I am of opinion that, looking from that point of view also, this Draft Constitution serves our purpose.....

Sir, our Constitution is a Constitution which has been evolved by us from comparison of the various constitutions prevailing in the civilized countries all over the world. Various good points from all the constitutions have been taken with such modifications as are necessary in the interests of our country. If we faithfully and honestly work out the Constitution, I feel sure that our country would be prosperous, would be happy, would be strong, and we would be able to maintain our independence and not only maintain our independence but would be fulfilling the great mission of our departed leader, the Father of the Nation, who said that hereafter India would be in such a position as to free the other dependent countries and bring peace and prosperity in the whole world.

With these words. Sir, I submit that the Motion moved by Dr. Ambedkar be accepted by the House.

***Pandit Balkrishna Sharma** (United Provinces : General) **:** Mr. Vice-President, Sir, so many friends have come here and offered their congratulations to the Honourable the Law Minister who was in charge

*CAD, Vol. VII. 6th November 1948, pp. 272-73.

of this Draft Constitution that it will sound almost a tautology if I repeat the same sentiments again. But I think I will be failing in my duty if I do not offer my humble and respectful congratulations to the learned Law Minister for the very lucid manner in which he has presented this Draft Constitution for our consideration.

Many friends and critics have come here and levelled certain charges against our Constitution. The one charge which has been repeated by many friends is that ours is a very bulky Constitution. The Mover himself referred to the bulky nature of this document. When we really examine the clauses and articles of the various other Constitutions we come to the conclusion that ours is indeed a bulky Constitution. Sir, as you know, it contains 315 Articles, whereas the Constitution of British North America, that is Canada, contains only 147 Articles ; the Commonwealth of Australia Act contains about 128 Articles ; the Union of South Africa Act contains 153 Articles ; the Irish Constitution contains only 63 Articles ; the U. S. Constitution contains 28 Articles ; the U.S.S.R. Constitution 146 Articles ; the Swiss Federal Constitution 123 Articles; the German Reich Constitution contains 181 Articles, and the Japanese Constitution 103 Articles. A glance at these Constitutions shows that none of them contains more than 200 Articles whereas our Constitution contains 315 Articles.

Critics have tried to make a great deal out of this bulkiness of our Constitution. But we must not forget that ours is a big country of 330 millions and we are making a Constitution for almost one fifth of humanity. Therefore there should be no wonder that our Constitution is bulky.....

Sir, our is a country which has got its own problems. In no country in the world are there what we call the principalities—the States—and there should be no wonder that in order to bring all these various factors in line with the present day democratic principles, the draftsmen of our Constitution could not compress into a few Articles all that they wanted to do. Therefore the charge that has been levelled against our Constitution that it is bulky seems to me to be frivolous.....

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***Pandit Thakur Dass Bhargava** (East Punjab : General) : ..... Since my friends insist that I should speak in English, I bow to their

*CAD, Vol. VII, 6th November 1948, p. 275.

wishes. It is true that I am able to express myself with greater ease in Hindi but at the same time I do wish that I should be understood by all the members of the House.

Sir, I wish to join in the chorus of praise which has been showered in this House on the Drafting Committee, but I cannot do so without reservation. When I bear in mind the complaints made by some friends here, I do feel that the Drafting Committee has not done what we expected it to do. Some of the members were absent, some did not join, some did not fully apply their minds.....The real soul of India is not represented by this Constitution, and the autonomy of the villages is not fully delineated here and this camera (holding out the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India's teeming millions should be reflected through this camera. All the same, Sir, I cannot withhold my need of praise for the labour, the industry and the ability with which Dr. Ambedkar has dealt with this Constitution. I congratulate him on the speech that he made without necessarily concurring with him in all the sentiments that he expressed before this House.

I think, Sir, that the soul of this Constitution is contained in the Preamble and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word 'fraternity' to the Preamble. Now, Sir, I want to apply the touch-stone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, maintain that the Constitution is good.

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***Prof. Shibban Lal Saksena** (United Provinces : General) :..... Mr. Vice-President, we are today called upon to discuss the principles underlying our Draft Constitution. To begin with, I must congratulate the learned Doctor who has placed this motion before us. I have read the speech, which he delivered, several times and I think it is a masterpiece of lucid exposition of our Constitution. I certainly think that there could not have been an abler advocacy for the Draft Constitution.....

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*CAD, Vol. VII, 6th November 1948, p. 284.

*…….Lastly, Sir, I thank the Drafting Committee for providing us with a very fine Constitution. I also feel that the suggestions that I have made will be discussed at the amendment stage and finally find a place in the Constitution of our country. Sir, with these words, I commend the motion to the House.

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†**Shri Sarangdhar Das** (Orissa States): Mr. Vice-President, Sir, like all the previous speakers I congratulate the Drafting Committee, and especially its Chairman. Dr. Ambedkar for the hard work that they have put in. But at the same lime, there are certain things in his speech with which I cannot agree……

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‡**Shri R. R. Diwakar** (Bombay : General) : Mr. Vice-President, Sir, Honourable Members who have spoken before me have covered enough ground and I think I should nut take much time of the House in going over the same ground. I would like to make a few points which from my point of view are very important when we are on the eve of giving a new Constitution to our country. One thing which I wish to make quite clear is that the Draft Constitution which is before us is really a monumental work and we all of us have already given congratulations to the Drafting Committee and its Chairman who is piloting it through this House. At the same time I would like to point out that the Drafting Committee has not only drafted the decisions of the Constituent Assembly but in my humble opinion it has gone far beyond mere drafting, I may say that it has reviewed the decisions, it has revised some of the decisions and possibly recast a number of them. It might be that it was inevitable to do so under the circumstances, but at the same time we, the Members of the Constituent Assembly, should be aware of this fact when we are considering the Draft and when we are thinking in terms of giving our amendments…….

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#**Mahboob Ali Baig Sahib Bahadur** (Madras : Muslim) : Mr. Vice-President, Sir, Dr. Ambedkar's analysis and review were remarkably lucid, masterly and exceedingly instructive and explanatory. One may not agree with his views but it is impossible to withhold praise for

*CAD, Vol. VII, 6th November 1948, p. 286.

†*Ibid.,* p. 286.

‡*Ibid.,* p. 291.

#*Ibid.,* 8th November 1948, p. 295.

his unique performance in delivering the speech he did while introducing his motion for the consideration of this House.....

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***Mr. Z. H. Lari :** .....In order to assess the value of the provisions, we have to bear in mind two things : firstly, certain admissions made by the Honourable Mover of the Resolution, I mean the Honourable Dr. Ambedkar, and secondly our experience of the working of democracy in the last fifteen months after the attainment of independence. When the House adopted resolutions which are the basis of the Draft Constitution, we had no such experience before us ; but now we have. The first admission that the Honourable Mover made was, and I will use his own words : "Democracy in India is only a top-dressing on Indian soil, which is essentially undemocratic"......"It is wiser not trust the legislatures to prescribe forms of administration. "With respect, I say he is mainly right.

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†**Mr. Hussain Imam :** .....I must say that I find the position of the President of the Drafting Committee unenviable. He has been attacked from the left for not having copied the Soviet Constitution, and from the right for not having gone back to the village panchayat as his unit. May I say that there is an element of confusion in some of our friends minds, when they want that the Constitution should provide for all the ills to which Indians are subject. It is not part of the Constitution that it should provide for cloth and food. A very revered Member of this Constituent Assembly regretted that this Constitution does not contain any provision for that purpose. My submission, Sir, is that the Constitution is based on the needs of a country to which it is applied. We have to see whether this Constitution does supply those essentials which are peculiar to our own circumstances.....

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‡**Begum Aizaz Rasul** (United Provinces: Muslim)**:** Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

Sir, I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After

*CAD, Vol. VII, 8th November 1948. p. 298.

†*Ibid.,* p. 302.

‡*Ibid.,* p. 305.

two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a Constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here……

*……A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic……

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that such a provision should have been made in the Draft Constitution, and I am sure women can look forward to equality of opportunity under the new Court.

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***Dr. Monomohan Das** (West Bengal : General) : Mr. Vice-President, Sir, a few days have passed since the Draft Constitution was introduced on the floor of this house by our able Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. During these few days, the Draft Constitution has met with scorching criticism at the hands of different members of this House. With the exception of a very few members who questioned the very competency and authenticity of this House to pass the Draft Constitution, all the other members have been unanimous in their verdict. They have accepted the Draft Constitution with some alterations, additions and omissions, in some clauses and articles, as a fairly workable one to begin with. One very re-assuring feature that we find in the Constitution is the single citizenship. As the Chairman of the Drafting Committee has said, unlike the American Constitution, the Draft Constitution has given us a single citizenship, the citizenship of India. In these days of provincialism, when every province likes to thrive at the cost of its neighbouring ones,

*CAD, Vol. VII, 8th November 1948, p. 305.

†*Ibid.,* p. 307.

when we have forfeited the sympathy and goodwill of our neighbouring provinces, it is indeed a great re-assuring feature. I, as a member from "West Bengal, especially find myself elated to think that henceforth when this Constitution is passed, when this clause of single citizenship, with its equal rights and privileges all over India, is passed, the door of our neighbouring provinces will be open to us, so that our unfortunate brethern from the Eastern Pakistan, will find a breathing space in our neighbouring provinces.....

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***Shri V. I. Muniswamy Pillai** (Madras : General) **:** Mr. Vice-President, Sir, nobody in this august Assembly or outside can belittle the efforts and the services rendered by the Drafting Committee that has presented the Draft Constitution for the approval of this House. The future generation will feel great pride that this Drafting Coommittee has been able to digest the various constitutions that are obtaining in the world today and to cull from them such of the provisions as are needed for the elevation of this great sub-continent.....

With these few observation, I congratulate the President and members of the Drafting Committee for their great service in presenting the Draft Constitution to this Assembly and I commend the motion to this House for its acceptance.

†Shrimati Dakshayani Velayudhan (Madras : General): Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman of the Drafting Committee has done his duty creditably within the scope of the general set-up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is totally uncharitable and undeserved. Even if there is any blame—and I think there is—it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft.....

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*CAD, Vol. VII, 8th November 1948, p. 308.

†*Ibid.,* 310.

***Shri Deshbandhu Gupta** (Delhi) : Mr. President, I am sorry I cannot congratulate Dr. Ambedkar, the Chairman of the Drafting Committee who has received congratulations from different members of the House…….

……This is what I wanted to say. As far as Delhi and other places are concerned. I would like to urge that we should take into consideration the fact that Delhi is the Capital and that as such it must be given a distinct status. I am one with Lata Deshbandhu Gupta on this question. But the small regions like Ajmer-Merwara, Coorg. Pantipiploda etc. should be merged in the provinces. It is no use making them centrally administered areas. This much I would like to submit to Doctor Sahib. He is a great scholar, and as such he should treat this country also as a land of wisdom. It is my appeal to him that he should give a place to the soul of India in this constitution…….

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†Giani Gurmukh Singh Musafir (East Punjab : Sikh) : Mr. President, like my Honourable friend Shri Deshbandhu Gupta. I cannot say that Dr. Ambedkar. President of the Drafting Committee does not deserve any congratulation. On several matters he deserves congratulation for several reasons and the Committee's labour in framing this first Constitution is certainly praiseworthy. In spite of that, if anybody discovers any error, he mentions it, according to the measure of his understanding

‡The Honourable Rev., J. J. M. Nichols-Roy (Assam : General): Mr. Vice-President, Sir. it is indeed a great privilege to associate myself in rendering tribute to Dr. Ambedkar and the other members of the Drafting Committee for the stupendous task they have undertaken to bring out this Draft Constitution. They all deserve our best thanks……..

#I must especially thank the Drafting Committee for accepting the draft for the creation of District Councils with autonomy in the hill districts in Assam which in the Sixth Schedule are called autonomous districts.

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$Mr. Mohammed Ismail Sahib (Madras : Muslim) : Mr. Vice-President…….. Sir, it is indeed a great speech in which the Honourable Dr. Ambedkar has commended the consideration of the Draft Constitution

*CAD, Vol. VII. 8th November 1948. pp. 312-17.

†*Ibid.,* p. 324.

‡*Ibid.,* p. 327.

#*Ibid.,* p. 327.

$*Ibid.,* p. 330.

to the House. For lucidity, for persuasiveness, impressiveness and logic. I do not think that it could be beaten. All congratulations to him but this does not mean that one is agreeing with everything that is said by him in the speech…….

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***Shri Alladi Krishnaswami Ayyar** (Madras : General) : Sir, Before making a few remarks on the Draft Constitution, I should like lo join in the tribute of praise to the Honourable Dr. Ambedkar for the lucid and able manner in which lie has explained the principles of the Draft Constitution, though I owe it lo myself to say that I do not share the views of my Honourable Friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil……

Before I proceed to make my remarks on the Draft Constitution, in view of certain observations of my honourable Friend Mr. T. T. Krishnamachari on the work of the Drafting Committee and the part taken by its members. I owe it to myself and to the House to explain my position. As a member of the Committee, in spite of my indifferent health, I look a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestion for the consideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft for reasons of health, I could not take part in any of its deliberations and I can claim no credit for the suggestions as lo the modifications of the draft…..

†…….A brief survey of the draft Constitution must convince the Members that it is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.

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*CAD, Vol. VII. 8th November 1984, p. 334.

†*Ibid.,* p. 338.

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***Pandit Govind Malaviya :** Sir, before I say anything else, I should like to offer my cordial congratulations to ourselves and to the Drafting Committee and its versatile Chairman, our friend, Dr. Ambedkar, for the very excellent work which, they have done in giving us this Draft Constitution. If was a difficult problem which they had to face and they have tackled it most excellently. There may be many things in the Draft Constitution which one might have wished to be slightly different, but then that must be so about anything which can be produced anywhere……

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†Shri R. Sankar (Travancore) : Sir, I must at the very out set congratulate the framers of the Draft Constitution on the very efficient manner in which they have executed their duty ; and I must particularly congratulate Dr. Ambedkar on the very lucid and able exposition of the principles of the Draft Constitution that he gave us by his brilliant speech. I do not propose to go into the details of the Draft Constitution but will content myself with dealing with one or two aspects of it. I think the most salient features of the Draft Constitution are a very strong Centre and rather weak but homogeneous Units. Dr. Ambedkar made a fervent appeal to the representatives of the States to take up such an attitude as to make it possible for all the States and the provinces to follow the same line, and in course of time to establish homogeneous units of the Federation without any distinction between the States and the provinces……

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‡Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, objections of fundamental importance have been raised to the Draft Constitution as it has emerged from the Drafting Committee. I agree that there is nothing characteristic in this Constitution reflecting our ancient culture or our traditions. It is true that it is a patch work of some of the old constitutions of the west,—not even some of the modern constitutions of the west,—with a replica of the Government of India Act, 1935. It is true that they have been brought together and put into

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*CAD, Vol. VII, 8th November 1948, p. 340.

†*Ibid.,* 9th November 1948, p. 345.

‡ *Ibid.,* 352.

a whole. Dr. Ambedkar is not responsible for this ; we alone have been responsible for this character of the Constitution. We have not thought that we must imprint upon this a new characteristic which will bring back to our memories our ancient culture. It is more our fault than the fault of Dr. Ambedkar.....

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***Shri Rohini Kumar Chaudhari** (Assam : General) : Sir. I am deeply grateful to you for having given me this opportunity of participating in this debate of momentous importance but before I proceed. I should like lo pay my share of tribute lo the members of the Drafting Committee, its worthy President and above all, our Constitutional Adviser whose services to our poor Province. Assam, in the heyday of his youth are still remembered with affection and gratitude.....

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†**Shri L. Krishnaswami Bharathi** (Madras : General) : Mr. Vice-President,.....Dr. Ambedkar deserves the congatulations of this House for the learned and brilliant exposition of the Draft Constitution. No congratulations are due to him for the provisions in the Draft for the simple reason they are not his. Honourable members may remember that most of the clauses in the Draft Constitution were discussed, debated and decided upon in this House. Only a very few matters were left over for incorporation by the Drafting Committee. The House, however, would tender its thanks for his labours in putting them in order.....

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‡**Shri Vishwambhar Dayal Tripathi** (United Provinces : General) : Sir,.....To come directly to the subject-matter, it has been a formality with almost all the speakers to congratulate the Members of the Drafting Committee and its Chairman on the labour they have put in and also on the merits of the Constitution. I would not undergo that formality. There is no doubt, of course, that they have put in a good deal of labour and have placed before us a complete picture of a Constitution on the principles that we laid down in this Constituent Assembly. I am also aware that there is a good deal of merit in the draft Constitution. They

*CAD. Vol. VII. 8th November 1948, p. 354.

†*Ibid.,* p. 365.

‡*Ibid.,* p. 369.

have no doubt thoroughly studied the constitutions of different countries and have tried to make a choice out of them and to adapt those constitutions to the needs of this country. This is the chief merit of this Draft Constitution. In one word, it is an 'orthodox' Constitution.....

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***Shri S. V. Krishnamurthy Rao** (Mysore) : Mr. Vice-President, I thank you for giving me an opportunity to speak on the Draft Constitution. I join the various speakers who have paid a chorus of tribute to the Drafting Committee and its Chairman. Dr. Ambedkar.

An attempt has been made in this Draft Constitution to put in the best experience of the various democratic constitutions in the world, both unitary and federal. Of course no Constitution can be perfect and even our Constitution will have to undergo some modifications before it finally emerges from this House.....

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†**Shri N. Madhava Rau** (Orissa States)**. :** Mr. Vice-President, I had not intended to join in this discussion, but in the course of the debate, several remarks were made not only on the provisions of the Draft Constitution, but on the manner in which the Drafting Committee had done their work. There was criticism made on alleged faults of commission and omission of the Committee. Mr. Alladi Krishnaswami Iyer who spoke yesterday and Mr. Saadulla who will speak on behalf of the Committee a little later have cleared or will clear the misapprehensions on which this criticism is based. I felt that as a member of the Committee who participated in many of its meetings after I had joined the Committee I should also contribute my share in removing these misapprehensions if they exist among any large section of the House.

It is true that the Draft Constitution does not provide for all matters, or in just the way, that we would individually have liked. Honourable Members have pointed out for instance, that cow-slaughter is not prohibited according to the Constitution, Fundamental Rights are too profusely qualified, no reference is made to the Father of the Nation the National Flag or the National Anthem. And two of our Honourable friends have rightly observed that there is no mention even of God in the Draft Constitution. We have all our favourite ideas ; but however sound or precious they may be intrinsically in other contexts, they

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*CAD, Vol. VII. 9th November 1948. p. 382.

†*Ibid* pp. 384-85.

cannot be imported into the Constitution unless they are germane to its purpose and are accepted by the Constituent Assembly.

Several speakers have criticised the Draft on the ground that it bears no impress of Gandhian philosophy and that while borrowing some of its provisions from alien sources, including the Government of India Act, 1935, it has not woven into its fabric any of the elements of ancient Indian polity.

Would our friends with Gandhian ideas tell us whether they are prepared to follow those ideas to their logical conclusions by dispensing for instance, with armed forces ; by doing away with legislative bodies. whose work, we have been told on good authority, Gandhiji considered a waste of time ; by scrapping our judicial system and substituting for it some simple and informal methods of administering justice ; by insisting that no Government servant or public worker should receive a salary exceeding Rs. 500 per month or whatever was the limit finally fixed ? I know some of the Congress leaders who sincerely believe that all this should and could be done. But we are speaking now of the Constitution as it was settled by the Constituent Assembly on the last occasion.....

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***Syed Muhammad Saadulla** (Assam : Muslim): Mr. Vice President, Sir.....The Drafting Committee is not self-existent. It was created by a Resolution of this House in August 1947, if I remember right. I personally was lying seriously ill at the lime and I could not attend that session. But, Sir, I find from the proceedings that as the Drafting Committee has been asked lo frame the Constitution within the four corners of the Objective Resolution, we will be met with the criticisms which we have heard now. Wise men even in those days had anticipated this and to the official Resolution an amendment was moved by the learned Premier of Bombay, Mr. Kher, wherein we are given this direction. I will read from his speech. He moved an amendment to the original Resolution for Constituting this Drafting Committee and there he said—"That the Drafting Committee should be charged with the duties of scrutinising the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution

*CAD, Vol. VII. 9th November 1948. p. 388.

and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee".....

.....That was the amendment which was accepted by the House. Sir, after this amendment of the Honourable Mr. Kher which was accepted by the House, it does not lie in the mouth of the Members of the Constituent Assembly to say that we have gone far beyond our jurisdiction.....

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Mr. Vice-President : Let us proceed with the subject.

***Syed Muhammad Saadulla :** .....How can I tell Honourable Members that we toiled and moiled that we did our best, that we ransacked all the known Constitutions, ancient and recent from three different continents, lo produce a Draft which has been termed to be nothing but patch-work ? Bui those who are men of art, those who love crafts, know perfectly well that even by patch-work, beautiful patterns, very lovable designs can be created. I may claim that in spite of the deficiencies in our Draft we have tried to bring a complete picture, to give this Honourable House a document as full as possible which may form the basis of discussion in this House. The Drafting Committee never claimed this to be the last word on the Constitution, that its provisions are infallible or that these Articles cannot be changed. The very fact that this Draft has been placed before this august House for final acceptance shows that we are not committed lo one policy or the other. Where we had differed from the recommendations of Committees, or where who had the temerity to change a word here or a word there from the accepted principles of this august House, we have given sufficient indication in foot-notes, so that nothing can be put in surreptitiously there. The attention of the House has been drawn so that their ideas may be focussed on those items in which the Drafting Committee thought that they should deviate from the principles already accepted or from the recommendations of the Committees.

[*After Mr. Saadulla's speech, the motion was put to vote as under.*—Ed.]

Mr. Vice-President : The question is :

> "That the Constituent Assembly do proceed to take into consideration the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August. 1947."

The motion was adopted.

[*The Draft Constitution is appended herewith. Clause by clause discussion of the Draft Constitution followed. Dr. Ambedkar's piloting of the Constitution may be seen in the next two parts of this Volume.—Ed.*]

*CAD, Vol. VII. 9th November 1948, p. 389.

Annexure
to
Part I

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REGISTERED No. L. 8181

The Gazette of India

EXTRAORDINARY
PUBLISHED BY AUTHORITY

NEW DELHI, THURSDAY, FEBRUARY 26, 1948

CONSTITUENT ASSEMBLY OF INDIA.

New Delhi, the 26th February, 1948.

No. CA/99/Cons./47.—The Draft Constitution of India, as settled by the Drafting Committee of the Constituent Assembly, together with a letter from the Chairman of the Committee to the President of the Constituent Assembly, is hereby published for general information. The Draft will be taken into consideration at the next session of the Constituent Assembly:—

New Delhi, 21st February, 1948.

To

The Hon'ble The PRESIDENT of the

Constituent Assembly of India, New Delhi.

Dear Sir,

Introductory.—On behalf of the Drafting Committee appointed by the resolution of the Constituent Assembly of August 29, 1947, I submit herewith the Draft of the new Constitution of India as settled by the Committee.

Although I have been authorized to sign the Draft on behalf of the members of the Committee, I should make it clear that not all the members were present at all the meetings of the Committee. But at every meeting at which any decision was taken the necessary quorum was present and the decisions were either unanimous or by a majority of those present.

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In preparing the Draft the Drafting Committee was of course expected to follow the decisions taken by the Constituent Assembly or by the various Committees appointed by the Constituent Assembly. This the Drafting Committee has endeavoured to do as far as possible. There were however some matters in respect of which the Drafting Committee felt it necessary to suggest certain changes. All such changes have been indicated in the Draft by underlining or side-lining the relevant portions. Care has also been taken by the Drafting Committee to insert a footnote explaining the reasons for every such change. I however think that, having regard to the importance of the matter, I should draw your attention and the attention of the Constituent Assembly to the most important of these changes.

2. Preamble.—The Objectives Resolution adopted by the Constituent Assembly in January, 1947, declares that India is to be a Sovereign Independent Republic. The Drafting Committee has adopted the phrase Sovereign Democratic Republic, because independence is usually implied in the word "Sovereign", so that there is hardly anything to be gained by adding the word "Independent", The question of the relationship between this Democratic Republic and the British Commonwealth of Nations remains to be decided subsequently.

The Committee has added a clause about fraternity in the preamble, although it does not occur in the Objectives Resolution. The Committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasised by special mention in the preamble.

In other respects the Committee has tried to embody in the preamble the spirit and, as far as possible, the language of the Objectives Resolution.

Article 1

3. Description of India.—In article 1 of the Draft, India has been described as a Union of States. For uniformity the Committee has thought it desirable to describe the Units of the Union in the new Constitution as States, whether they are known at

present as Governors' Provinces, or Chief Commissioners' Provinces or Indian States. Some difference between the Units there will undoubtedly remain even in the new Constitution; and in order to mark this difference, the Committee has divided the States into three classes: those enumerated in Part I of the First Schedule, those enumerated in Part II, and those enumerated in Part III. These correspond respectively to the existing Governors' Provinces, Chief Commissioners' Provinces and Indian States.

It will be noticed that the Committee has used the term Union instead of Federation. Nothing much turns on the name, but the Committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in structure.

Articles 5 & 6

4. Citizenship.—The Committee has given anxious and prolonged consideration to the question of citizenship of the Union. The Committee has thought it necessary that, in order to be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union whether by birth, or descent, or domicile. The Committee doubts whether it will be wise to admit as citizens those who, without any such connection with the territory of India, may be prepared to swear allegiance to the Union; for if other States were to copy such a provision, we might have within the Union a large number of persons who, though born and permanently resident therein, would owe allegiance to a foreign State. The Committee has, however, kept in view the requirements of the large number of displaced persons who have had to migrate to India within recent months, and has provided for them a specially easy mode of acquiring domicile and, thereby citizenship. What they have to do (assuming that they or either of their parents or any of their grand-parents were born in India or Pakistan) is—

(a) to declare before a District Magistrate in India that they desire to acquire a domicile in India, and

(b) to reside in India for at least a month before the declaration.

Articles 7 to 27

5. Fundamental Rights.—The Committee has attempted to make these rights and the limitations to which they must necessarily be subject as definite as possible, since the courts may have to pronounce upon them.

Article 59

6. Powers of the President of the Union.—The Committee has considered it desirable to provide that the President should have power to suspend, remit or commute death sentences passed in an Indian State, as in other Units, without prejudice to the powers of the Ruler.

Article 278

It will be remembered that the new Constitution empowers the Governor, in certain circumstances, to issue a proclamation suspending certain provisions of the Constitution; he can do so only for a period of two weeks and is required to report the matter to the President. The Committee has provided that upon receipt of the report the President may either revoke the proclamation or issue a fresh proclamation of his own, the effect of which will be to put the Central Executive in the place of the State Executive and the Central Legislature in the place of the State Legislature. In fact, the State concerned will become a centrally administered area for the duration of the proclamation. This replaces the "Section 93 regime" under the Act of 1935.

Article 60

7. Executive Power in respect of Concurrent List subjects.—Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the Province subject in certain matters to the power of the Centre to give directions as to how the executive authority shall be exercised, vide Parts I & II of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. In the Draft Constitution the Committee has departed slightly from this plan and has provided that the executive power shall vest in the Province (now called the State) "save as expressly provided in this Constitution or by any law made by Parliament." The effect of this saving clause is that it will be open to the Union

Parliament under the new Constitution to confer executive power on Union authorities, or, if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities. In making this provision the Committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power.

Article 67

8. Composition of the Council of States.—According to a decision taken by the Constituent Assembly, the Council of States was to contain not more than 25 members (out of a total not exceeding 250) to be elected from panels or constituencies on a functional basis. The panel system having hitherto proved unsatisfactory in the country from which it was copied (Ireland), the Committee has thought it best to provide for 15 members to be nominated by the President for their special knowledge or practical experience in Literature, Art, Science, etc. The Committee considers that no special representation for labour or commerce and industry among these nominations is necessary, in view of the fact that they are certain to be adequately represented in the elected element of the Union Parliament owing to adult suffrage.

Articles 63 and 151.

9. Duration of Union Parliament and of State Legislatures.—The Committee considers that under the parliamentary system, particularly at the beginning of a new Constitution on the basis of adult suffrage, a longer term than four years is desirable. New ministers require some time to acquaint themselves with the details of administration, and their last year of office is usually taken up in preparing for the next general election. With a four-year term they will not have enough time for any kind of planned administration.

Articles 107 and 200

10. Supreme Court and High Courts.—Following the practice prevailing in the United Kingdom and the United States of America, the Committee has proposed that in certain circumstances retired judges may be invited to serve in particular cases both in the Supreme Court and in the High Courts.

Article 131.

11. Mode of selection of Governors.—Some members of the Committee feel that the co-existence

of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction. The Committee has therefore suggested an alternative mode of appointing Governors: the Legislature should elect a panel of four persons (who need not be residents of the State) and the President of the Union should appoint one of the four as Governor.

Article 138.

12. Deputy Governors.—The Committee has not thought it necessary to make any provision for Deputy Governors, because a Deputy Governor will have no function to perform so long as the Governor is there. At the Centre, the position is different, because the Vice-President is also the ex-officio Chairman of the Council of States; but in most of the States there will be no Upper House and it will not be possible to give the Deputy Governor functions similar to those of the Vice-President. There is a provision in the Draft enabling the Legislature of the State (or the President) to make necessary arrangements for the discharge of the functions of the Governor in any unforeseen contingency.

Articles 212 to 214.

13. Centrally administered areas.—In accordance with a resolution of the Constituent Assembly, you, as the President, appointed a Committee of seven members for the purpose of recommending constitutional changes in the centrally administered areas namely, Delhi, Ajiner-Merwara, Coorg, Panth Piploda and the Andaman and Nicobar Islands. The Committee submitted its report on October 21, 1948.

The Committee's recommendations were briefly these:—

(1) Each of the provinces of Delhi, Ajmer-Merwara and Coorg should have a Lieutenant-Governor appointed by the President of India.

(2) Each of these provinces should normally be administered by a Council of ministers responsible to the Legislature.

(3) Each of these provinces should have an elected Legislature.

As regards Panth Piploda the Committee recommended that it should be added to Ajmer-Merwara and as regards the Andaman and Nicobar Islands

the Committee recommended that they should continue to be administered by the Government of India as at present, with such adjustments as might be deemed necessary: in other words, these Islands were to continue as a Chief Commissioner's province. The member representing Ajmer-Merwara and the member representing Coorg on this Committee appended a note to the Committee's report, in which they said that the special problems arising out of the smallness, geographical position and scantiness of resources of these areas might at no distant future necessitate the joining of each of these areas to a contiguous unit. They therefore urged that there should be a specific provision in the Constitution to make this possible after ascertaining the wishes of the people concerned.

So far as Delhi is concerned, it seems to the Committee that as the capital of India it can hardly be placed under a local administration. In the United States, Congress exercises exclusive legislative power in respect of the seat of the Government; so too in Australia. The Drafting Committee has, therefore, come to the conclusion that a more comprehensive plan than that recommended by the ad hoc Committee is desirable. Accordingly, the Drafting Committee has proposed that these central areas may be administered by the Government of India either through a Chief Commissioner or a Lieutenant-Governor or through the Governor or the Ruler of a neighbouring State. What is to be done in the case of a particular area is left to the President to prescribe by order; he will, of course, in this, as in other matters, act on the advice of responsible ministers. He may, if so advised, have a Lieutenant-Governor in Delhi; he may, again, if so advised, administer Coorg either through the Governor of Madras or through the Ruler of Mysore after ascertaining the wishes of the people of Coorg. He may also by order create a local Legislature or a Council of advisers with such constitution, powers and functions, in each case, as may be specified in the order. This seems to the Drafting Committee to be a flexible plan which can be adjusted to the diverse requirements of the areas concerned.

The Committee has also provided that Indian States (such as those of the Orissa group) which have ceded full and exclusive authority, jurisdic-

tion and powers to the Central Government may be administered exactly as if they were Centrally Administered Areas, i.e., through a Chief Commissioner, or Lieutenant-Governor, or through the Governor or the Ruler of a neighbouring State, according to the requirements of each case.

Articles 216 to 232.

14. Distribution of Legislative Powers.—For the most part, the Drafting Committee has made no change in the Legislative Lists as recommended by the Union Powers Committee and adopted by the Constituent Assembly, but I would draw attention to three matters in respect of which the Drafting Committee has made changes:

(a) The Committee has provided in effect that when a subject, which is normally in the State List, assumes national importance, then the Union Parliament may legislate upon it. To prevent any unwarranted encroachment upon State powers, it has been provided in the Draft that this can be done only if the Council of States, which may be said to represent the States as Units, passes a resolution to that effect by a two-thirds majority.

(b) The Committee has considered it desirable to put into the Concurrent List the whole subject of succession, instead of only succession to property other than agricultural land. Similarly, the Committee has put into the Concurrent List all the matters in respect of which parties are now governed by their personal law. This will facilitate the enactment of a uniform law for India in these matters.

(c) While putting land acquisition for the pur poses of the Union into the Union List and land acquisition for the purposes of a State into the State List, the Committee has provided that the principles on-which compensation for acquisition is to be determined shall in all cases be in the Concurrent List, in order that there may be some uniformity in this matter.

In addition, in view of the present abnormal circumstances which require Central control over essential supplies, the Committee has provided that for a term of five years from the commencement of the Constitution, trade and commerce in, and the production, supply and distribution of, certain essential commodities as also the relief and rehabilitation of displaced persons shall be on the same footing as Concurrent List subjects. In adopting this course, the Committee has followed the provisions of the India (Central Government and Legislature) Act, 1946.

Articles 247 to 269.

15. Financial provisions.—Broadly speaking, the Drafting Committee has incorporated in the Draft the recommendations of the Expert Finance Committee, except those relating to the distribution of revenues between the Centre and the States. In view of the unstable conditions which at present prevail in this field, the Drafting Committee has thought it best to retain the status quo in the matter of distribution of revenues for a period of five years, at the end of which a Finance Commission may review the situation.

Articles 281 to 283.

16. Services.—The Committee has refrained from inserting in the Constitution, any detailed provisions relating to the Services; the Committee considers that they should be regulated by Acts of the appropriate Legislature rather than by constitutional provisions, as the Committee feels that the future Legislatures in this country, as in other countries. may be trusted to deal fairly with the Services.

Articles 289 to 291.

17. Elections, Franchise, etc.—The Committee has not thought it necessary to incorporate in the Constitution electoral details including the delimitation of constituencies. These have been left to be provided by auxiliary legislation.

Article 304.

18. Amendment of the Constitution.—The Committee has inserted a provision giving a limited constituent power to the State Legislatures in respect of certain defined matters.

Articles 292, 294 and 305.

19. Safeguards for Minorities.—The Draft embodies the decisions of the Constituent Assembly and of the Advisory Committee in respect of the

reservation of seats in the Legislatures and of posts in the public services. Although these provisions do not extend to the Indian States, nevertheless, in the larger interests of India, the Indian States should adopt similar provisions for the minorities therein. The Drafting Committee has specially asked me to draw your attention to the importance of this matter.

First Schedule.

20. Linguistic Provinces.—I would invite special attention to Part I of the First Schedule and the foot-note thereto. If Andhra or any other linguistic region is to be mentioned in this Schedule before the Constitution is finally adopted, steps will have to be taken immediately to make them into separate Governors' Provinces under section 290 of the Government of India Act, 1935, before the Draft Constitution is finally passed. Of course, the new Constitution itself contains provisions for the creation of new States, but this will be after the new Constitution comes into operation.

Fifth and Sixth Schedules

21. Scheduled Tribes, Scheduled Areas and Tribal Areas.—The Committee has embodied in the Schedules to the Constitution the recommendations of the Sub-Committees on these subjects.

22. A separate note recorded by Shri Alladi Krishnaswami Ayyar on certain points (not involving any question of principle) is appended to the Draft at his request.

23. I cannot transmit to you this Draft Constitution without placing on record the Committee's gratitude for the assistance the Committee has received in this difficult task from Sir B. N. Rau, the Constitutional Adviser, Shri S. N. Mukerjee, Joint Secretary and Draftsman, and the staff of the Constituent Assembly Secretariat.

Yours truly,

B. R. AMBEDKAR.

DRAFT CONSTITUTION OF INDIA

Preamble.

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC*** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring, the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this——————of——————(day of May, 1948 A.D.), do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

*This follows the decision taken by the Constituent Assembly. The question of the relationship between this Democratic Republic and the British, Commonwealth of Nations remains to be decided subsequently.

PART I

The Union and its Territory and Jurisdiction

Name and territory of the Union.

*1. (1) India shall be a Union of States.

(2) The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule.

(3) The territory of India shall comprise—

(a) the territories of the States;

(b) the territories for the time being specified in Part IV of the First Schedule; and

(c) such other territories as may be acquired.

Admission and establishment of new States.

2. Parliament may, from time to time, by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Formation of new States and alteration of areas, boundaries or names of existing States.

3. Parliament may by law—

(a) form a new State by separation of territory from a State or by uniting two or more States or parts of States;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except by the Government of India and unless—

(a) either—

(i) a representation in that behalf has been made to the President by a majority of the representatives of the territory in the Legislature of the State from which the territory is to be separated or excluded; or

*The Committee considers that, following the language of the Preamble to the British North America Act, 1867, it would not be inappropriate to describe India as a Union although its Constitution may be federal in structure.

(ii) a resolution in that behalf has been passed by the Legislature of any State whose boundaries or name will be affected by the proposal to be contained in the Bill; and

(b) where the proposal contained in the Bill affects the boundaries or name of any State, other than a State for the time being specified in Part III of the First Schedule, "the views of the Legislature of the State both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and where such proposal affects the boundaries or name of any State for the time being specified in Part III of the First Schedule, the previous consent of the State to the proposal has been obtained.

Law made under articles 2 and 3 to provide for the amendment of the First Schedule and incidental and consequential matters.

4. (1) Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 304.

*The Committee is of opinion that in the case of any State other than a State specified in Part III of the First Schedule, the previous consent of the State is not necessary and it would be enough if the views of the Legislature of the State were obtained by the President.

PART II

Citizenship

Citizenship at the date of commencement of the Constitution.

5. At the date of commencement of this Constitution—

(a) every person who or either of whose parents or any of whose grand-parents was born in the territory of India as defined in this Constitution and who has not made his permanent abode in any foreign State after the first day of April, 1947; and

(b) every person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), or in Burma, Ceylon or Malaya, and who has his domicile in the territory of India as defined in this Constitution,

shall be a citizen of India, provided that he has not acquired the citizenship of any foreign State before the date of commencement of this Constitution.

Explanation.—For the purposes of clause (b) of this article, a person shall be deemed to have his domicile in the territory of India—

(i) if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him, or

*(ii) if he has, before the date of commencement of this Constitution, deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of the declaration.

Parliament to regulate the right of citizenship by law.

6. Parliament may, by law, make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto.

*The Committee is of opinion that auxiliary action whether by legislation or otherwise may have to be taken before the commencement of this Constitution for the receipt of declarations, keeping of registers of such declarations and other incidental matters for the purpose of clause (ii) of the Explanation.

PART III
Fundamental Rights
GENERAL

Definition.

7. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India.

Savings.

8. (1) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void:

*Provided that nothing in this clause shall prevent the State from making any law for the removal of any inequality, disparity, disadvantage or discrimination arising out of any existing law.

(3) In this article, the expression "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof.

Rights of Equality

Prohibition of discrimination on grounds of religion, race, caste or sex.

9. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject

*The proviso has been added in order to enable the State to make laws removing any existing discrimination. Such laws will necessarily be discriminatory in a sense, because they will operate only against those who hitherto enjoyed an undue advantage. It is obvious that laws of this character should not be prohibited.

to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the revenues of the State or dedicated to the use of the general public.

(2) Nothing in this article shall prevent the State from making any special provision for women and children.

Equality of opportunity in matters of public employment.

10. (1) There shall be equality of opportunity for all citizens in matters of employment under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.

(4) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Abolition of Untouchability.

11. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Uhtouchability" shall be an offence punishable in accordance with law.

Abolition of titles.

12. (1) No title shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.

*The Committee is of opinion that before the words "class of citizens" the word "backward" should be inserted.

Protection of certain rights regarding freedom of speech, etc.

13. (1) Subject to the other provisions of this article, all citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(f) to acquire, hold and dispose of property; and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or *for the protection of the interests of any aboriginal tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order, morality or health,

*The Committee is of opinion that no protection to any minority group is necessary in this article.

restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing, or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

Protection in respect of conviction of offence

14. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence.

(2) No person shall be punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Protection of life and personal liberty and equality before law.

*15. No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India.

Freedom of trade, commerce and intercourse throughout the territory of India

**16. Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free.

*The Committee is of opinion that the word "liberty" should be qualified by the insertion of the word "persona" before it, for otherwise it might be construed very widely so as to include even the freedoms already dealt with in article 13.

The Committee has also substituted the expression "except according to procedure established by law" for the words "without due process of law" as the former is more specific (c.f. Art. XXXI of the Japanese Constitution, 1946). The corresponding provision in the Irish Consitution runs ; "No citizen shall be deprived of his personal liberty have in accordance with law".

The Committee is also of opinion that the words "or the equal protection of the laws" should be inserted after the words "equality before the law" as in section 1 of Article XIV of the U.S.A. Constitution (1865).

**The Committee has omitted the words "by and between the citizens" which occurred alter the words "trade, commerce and intercourse" in the provision as adopted by the Constituent Assembly. The qualifying words might necessitate elaborate inquiries at State frontiers as to the nationality of the consignor and consignee.

Prohibition of traffic in human beings and enforced labour

17. (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes. In imposing such service the State shall not make any discrimination on the ground of race, religion, caste or class.

Prohibition of employment of children in factories, etc.

18. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Rights relating to Religion

Freedom of conscience and free profession, practice and propagation of religion.

19. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Explanation.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

(2) Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) for social welfare and reform or for throwing open Hindu religion institutions of a public character to any class or section of Hindus.

Freedom to manage religious affairs and to own, acquire and administer properties for religious or charitable purposes.

20. Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

Freedom as to payment of taxes for promotion and maintenance of any particular religion or religious denomination.

21. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

*22. (1) No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds:

Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(2) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person, or if such person is a minor, his guardian has given his consent thereto.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.

Cultural and Educational Rights

Protection of interests of minorities.

23. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.

*This article follows the recommendation of the *ad hoc* Committee.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3) (a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

(b) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language.

Right to Property

Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) Nothing in clause (2) of this article shall affect—

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

Right to Constitutional Remedies

Remedies for enforcement of rights conferred by this Part.

25, (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders in the nature of the writs of

habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.

(4) The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Power to Parliament to modify the rights guaranteed in this Part in their application to Forces.

26. Parliament may by law determine to what extent any of the rights guaranteed in this Part shall in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Legislation to give effect to the provisions of this Part.

27. Notwithstanding anything elsewhere contained in this Constitution, Parliament shall have, and the Legislature of a State for the time being specified in Part I or Part III of the First Schedule shall not have, power to make laws—

(a) with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament, and

(b) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws to provide for such matters and for prescribing punishment for such acts :

Provided that any law in force in the territory of India or in any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act which is declared to be an offence under this Part shall continue in force therein until altered or repealed or amended by Parliament or other competent authority.

PART IV

Directive Principles of State Policy

Definition.

28. In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III of this Constitution.

Application of the principles set forth in this Part.

29. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

State to secure a social order for the promotion and welfare of the people.

30. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Certain principles of policy to be followed by the State.

31. The State shall, in particular, direct its policy towards securing—

(i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(iv) that there is equal pay for equal work for both men and women;

(v) that the strength and health of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

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Right to work, to education and to public assistance in certain cases.

32. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

Provision for just and humane conditions of work and maternity relief.

33. The State shall make provision for securing just and humane conditions of work and for maternity relief.

Living wage, etc., for workers

34. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Uniform civil code for the citizens.

35. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Provision for free primary education.

36. Every citizen is entitled to free primary education and the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Promotion of educational and economic interests of Scheduled Castes Scheduled tribes and other weaker sections.

37. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health

38. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

Protection, preservation and maintenance of monuments and places and objects of national importance.

39. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to law made by Parliament all such monuments or places or objects.

Promotion of international peace and security.

40. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and respect for treaty obligations in the dealings of organised people with one another.

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PART V

The Union

CHAPTER I—The Executive

THE PRESIDENT AND VICE-PRESIDENT

The President of India.

41. There shall be a President of India.

Executive power of the Union.

42. (1) The executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of India shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

Election of President.

43. The President shall be elected by the members of an electoral college consisting of—

(a) the members of both Houses of Parliament, and

(b) the elected members of the Legislatures of the States.

Manner of election of President.

44. (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

*(2) For the purpose of securing such uniformity the number of votes which each elected member of Parliament and of the Legislature of each State is entitled to cast at such election shall be determined in the following manner:—

(a) every elected member of the Legislature of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Legislature;

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*The method of calculation set out in clause (2) of article 44 may be illustrated as follows :—

Illustration to sub-clause (*a*) *and* (*b*) *of clause* (*2*) :—

(i) The population of Bombay is 20,849,840. Let us take the total number of elected members in the Legislative Assembly of Bombay to be 208 (*i.e.,* one member representing one lakh of the population). To obtain the number of votes which each such elected member will be entitled to east at the election of the President, we have first to divide 20,849,840 (which is the population) by 208 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case, the quotient is 100239. The number of votes which each such member will be entitled to cast would be 100,239/1000 *i.e.*, 100 (disregarding the remainder 239 which is less than five hundred).

(ii) Again, the population of Bikaner is 1,292,938. Let us take the total number of elected members of the Legislature of Bikaner to be 130 (*i.e.,* one member representing roughly ten thousand of the population). Now, applying the aforesaid process, if we divide 1,292,938 (*i.e.*, the population) by 130 (*i.e.,* the -total number of elected members), the quotient is 9945. Therefore, the number of votes which each member of the Bikaner Legislature would be entitled to cast is 9945/1000 that is 10 (counting the remainder 945 which greater than five hundred as equivalent to 1000).

Illustration under sub-clause (*c*) *of clause* (*2*) :—

If the total number of votes assigned to the members of the Legislatures of the States in accordance with the above calculation be 74,940 and the total number of elected members of both the Houses of Parliament be 750, then to obtain the number of votes which each member of either House of Parliament will be entitled to cast at the election of the President, we should have to divide 74,940 by 750. Thus the number of votes which each -such member will be entitled to cast in the case would be $\frac{74,940}{750} = 99\frac{23}{25}$ i.e., 100 (the fraction $\frac{23}{25}$ which exceeds one-half being counted as one).

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislatures of the States under sub-clauses (a) and (b) of this clause by the total number of such members, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation.—In this article, the expression "the Legislature of a State" means, where the Legislature is bicameral, the Lower House of the Legislature, and the expression "population" means the population as ascertained at the last preceding census.

Term of office of President.

45. The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) the President may, by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 50 of this Constitution;

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

Eligibility for re-election.

46. A person who holds, or who has held, office as President shall be eligible for re-election to that office once, but only once.

Qualifications for election as President.

47. (1) No person shall be eligible for election as President unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation,—For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of the Legislature, and if not less than three-fourths of the members of the Legislature or House, as the case may be, are elected.

Conditions of President's office

48. (1) The President shall not be a member either of parliament or of the Legislature of any State, and if a member of Parliament or of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as President.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and there shall be paid to the President such emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

Affirmation or oath by the President or person acting as, or discharging the functions of the, President before entering office.

49. Every President and every person acting as President or discharging the functions of the President shall before entering upon his office make and subscribe in the presence of the Chief Justice of India an affirmation or oath in the following form, that is to say—

"I, A. B., do solemnly affirm (or swear) that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Procedure for impeachment of the President.

50. (*1*) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after a notice in writing signed by not less than thirty members of the House has been given of their intention to move the resolution, and

(b) such resolution has been supported, by not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Time of holding elections to fill vacancies in the office of President and the term of office of persons elected to fill casual vacancies.

51. (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall be entitled to hold office for the full term of five years as provided in article 45 of this Constitution,

The Vice-President of India.

52. There shall be a Vice-President of India.

The Vice-President to be ex-officio Chairman of the Council of States.

53. The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office or position of emolument:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 54 of this Constitution, he shall not perform the duties of the office of Chairman of the Council of States.

The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or the absence, of the President.

54. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of the, President, have all the powers and immunities of the President.

Election of Vice-President

55. (1) The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of

proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member either of Parliament or of the Legislature of any State, and if a member of Parliament or of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

(a) is a citizen of India;

(b) has completed the age of thirty-five years; and

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this clause, a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

(5) An election to fill a vacancy caused by the expiration of the term of office of Vice-president shall be completed before the expiration of the term.

(6) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill such vacancy shall be entitled to hold office for the full term of five years as provided in article 56 of this Constitution.

Term of office of Vice-President.

56. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Power of Parliament to provide for the discharge of the functions of the Presdient in any other contingency.

57. Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

Matters relating to or connected with the election of a President or Vice-Presidont.

58. (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

59. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws;

*(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the power conferred by law on any officer of the Armed Forces of India to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) of this article shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor or the Ruler of the State under any law for the time being in force.

Extent of executive power of the Union.

60. (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

*The Committee is of opinion that the President should have power to suspend, remit or commute a death sentence passed in any State, without prejudice to the powers of the Governor or Ruler.

*Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything contained in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Council of Ministers

Council of ministers to aid and advise President.

61. (1) There shall be a Council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into in any court.

Other provisions as to ministers.

62. (1) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The ministers shall hold office during the pleasure of the President.

(3) The Council shall be collectively responsible to the House of the People.

(4) Before a minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

*The Committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should' vest primarily in the State-concerned except as otherwise provided in the Constitution or in any law made by Parliament.

(5) A minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a minister.

(6) The salaries and allowances of ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determine, shall be as specified in the Second Schedule.

The Attorney-General for India

Attorney-General for India.

*63. (1) The President shall appoint a person, who is qualified to be appointed a judge of the Supreme Court, to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

Conduct of business of the Government of India.

64. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified

*The Committee has substituted the term "Attorney-General for India" for "Advocate-General for India" partly to distinguish him from the Provincial Advocates-General and partly to follow the terminology prevalent in other countries like the U.K. and the U.S.A.

in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

Duties of Prime Minister as respects the furnishing of information to the President, etc.

65. It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.

CHAPTER II—Parliament

GENERAL

Constitution of Parliament.

66. There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Composition of Houses of Parliament.

67. (1) The Council of States shall consist of two hundred and fifty members of whom—

(a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States:

Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder.

*(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely,—

(a) literature, art, science and education;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services.

(3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall—

(a) where the Legislature of the State has two Houses, be elected by the elected members of the Lower House;

(b) where the Legislature of the State has only one House, be elected by the elected members of that House; and

(c) where there is no -House of the Legislature for the State, be chosen in such manner as Parliament may by law prescribe.

(4) The representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

*The Committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for Labour or Commerce and Industry is necessary in view of adult suffrage. The Committee understands that the panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the Committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the Committee has had to substitute nomination for election and as the Committee thinks that no special representation for Labour or Commerce and Industry is necessary, the Committee is of opinion that it would be enough to provide for fifteen nominated members.

(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.

(b) For the purpose of sub-clause (a), the States of India shall be divided, grouped or formed into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population:

Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.

(c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India.

(6) The election to the House of the People shall he on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections.

(7) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(8) Upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be

readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine.

(9) When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article.

Duration of Houses of Parliament.

68. (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for *five years from the date appointed for its first meeting and no longer, and the expiration of the said period of *five years shall operate as the dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Sessions of Parliament, prorogation and dissolution.

69. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this article, the President may from time to time—

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

*The Committee has inserted "five years" instead of "four years" as the life of the House of the People as it considers that under the Parliamentary system of Government the first year of a minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

(b) prorogue the Houses;

(c) dissolve the House of the People.

Right of President to address and send messages to Houses.

70. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special address by the President at the commencement of each session of Parliament and discussion in Parliament of matters referred to in the address.

71. (1) At the commencement of every session the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

Right of ministers and Attorney-General as respects Houses.

72. Every minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

The Chairman and Deputy Chairman of the Council of States.

73. (1) The Vice-President of India shall be ex-officio Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.

Vacation and resignation of, and removal from the office of, Deputy Chairman.

74. A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other persons to perform the duties of the office of, or to act as, Chairman.

75. (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the, President under article 54 of this Constitution, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Speaker and Deputy Speaker of the House of the People.

76. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker

77. A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

Power of the Deputy Speaker or other persons to performs the duties of the office of, or to act as, Speaker.

78. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and the Deputy Speaker.

79. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Conduct of Business

Voting in Houses; power of Houses to act notwithstanding vacancies and quorum

80. (1) Save as provided in this Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Chairman or Speaker or person acting as such.

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have

and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a House, less than one-sixth of the total number of members of the House are present, it shall be the duty of the Chairman or Speaker or person acting as such either to adjourn the House, or to suspend the meeting until at least one-sixth of the members are present.

Disqualifications of Members

Declaration by members.

81. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

Vacation of seats.

82. (1) No person shall be a member of both Housed of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Disqualifications for membership.

83. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

*(d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; and

(e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that—

(a) he is a minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Penalty for sitting and voting before making declaration under article 81 or when not qualified or when disqualified.

84. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 81 of this Constitution, or when he knows that he is not qualified, or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be

* The Committee has inserted this sub-clause, following the provisions of Section 44 (i) of the Commonwealth of Australia Constitution Act.

liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Government of India.

Privileges and Immunities of Members

Privileges, etc. of members.

85. (1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament as they apply in relation to members of Parliament.

Salaries and allowances of members.

86. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Legislature of the Dominion of India.

Legislative Procedure

Provisions as to Introduotion and passing of Bills.

87. (1) Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 88 and 89 of this Constitution, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of article 88 of this Constitution, lapse on a dissolution of the House of the People.

Joint sitting of both Houses in Certain cases.

88. (1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days.

(3) Where the President has under clause (1) of this article notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

Special procedure in respect of Money Bills.

89. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of thirty days

from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

Definition of "Money Bills"

90. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) supply;

(d) the appropriation of the revenues of India;

(e) the declaring of any expenditure to be expenditure charged on the revenues of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the revenues of India or the custody or issue of such money or the audit of the accounts of the Government of India; or

(g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under the last preceding article, and when it is presented to the President for assent under the next succeeding article, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Assent to Bills.

91. When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.

Procedure in Financial Matters

Annual financial statement

92. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts

and expenditure of the Government of India for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of India; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to ox in respect of judges of the Supreme Court;

(ii) the pensions payable to or in respect of judges of the Federal Court;

(iii) the pensions payable to or in respect of judges of any High Court which exercises or immediately before the commencement of this Constitution exercised jurisdiction within any area included in the States for the time being specified in Parts I and II of the First Schedule;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; and

(f) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

Procedure in Parliament with respect to estimates.

93. (1) So much of the estimates as relates to expenditure charged upon the revenues of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of these estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People and the House of the People shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

Authentication of schedule of authorised expenditure.

94. (1) The President shall authenticate by his signature a schedule specifying—

(a) the grants made by the House, of the People under the last preceding article;

(b) the several sums required to meet the expenditure charged on the revenues of India, but not exceeding in any case, the sum shown in the statement previously laid before Parliament.

(2) The schedule so authenticated shall be laid before the House of the People, but shall not be open to discussion or vote in Parliament.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of India shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

95. If in respect of any financial year further expenditure from the revenues of India becomes necessary over and above the expenditure theretofore authorised for that year, the President shall cause to be laid before both the Houses of Parliament a

supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Excess grants.

*96. If in any financial year expenditure from the revenues of India has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of articles 93 and 94 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

Special provisions as to financial Bills.

97. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 90 of this Constitution shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services Tendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

*This article follows the recommendations of the Expert Committee on the Financial provisions of the Constitution.

Procedure Generally

Rules of procedure.

98. (1) Each House of Parliament may make rules for regulating', subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People,* or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

Language to be used in Parliament.

99. (1) In Parliament business shall be transacted in Hindi or English:

Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

(2) The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary in Hindi or English of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

*The Committee is of opinion that the Speaker of the House of the People should preside at a joint sitting of the two Houses of Parliament as the House of the People is the more numerous body.

Restrictions on discussion in Parliament.

100. (1) No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided.

(2) In this article the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of this Part.

Courts not to inquire into proceedings of Parliament.

101. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER III—Legislative Powers of the President

Power of President to promulgate Ordinances during recess of Parliament.

102. (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament assented to by the President, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation:—Where the Houses of Parliament are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

CHAPTER IV—The Federal Judicature

Establishment and constitution of Supreme Court.

103. (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and such number of other judges not being less than *seven as Parliament may by law prescribe.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(a) a judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or

* The Committee considers that seven judges would in the beginning be sufficient and Parliament might, by law, afterwards increase the number.

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I:—In this clause 'High Court' means a High Court which exercises, or which before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II:—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office, after he became an advocate, shall be included.

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for, the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a judge under the last preceding clause.

(6) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him a declaration according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Salaries etc. of judges.

104. The judges of the Supreme Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by Parliament, and until they are so fixed shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Appointment of acting Chief Justice.

105. When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

Appointment of ad hoc judges.

106. (1) If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the court, the Chief Justice may, after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the court, as an ad hoc judge, for such period as may be necessary, of a judge of a High Court to be nominated by the Chief Justice of India.

(2) It shall be the duty of the judge, who has been so nominated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a judge of the Supreme Court.

Attendance of retired Judges at settings of the Supreme court.

*107. Notwithstanding anything contained in this Chapter, the Chief Justice of India may at any time, subject to the provisions of this article, request any person who has held the of a of a judge of the Supreme Court or of the Federal Court to sit and act as a judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of that court unless he consents so to do.

*The employment of retired judges follows the practice in the United Kingdom and in the United States of America.

Seat of Supreme Court.

108. The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may, with the approval of the President, from time to time, appoint.

Original jurisdiction of the Supreme Court.

109. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States, or

(b) between the Government of India and any State or States on one side and one or more. other States on the other; or

(c) between two or more States,

if in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which was entered into or executed before the date of commencement of this Constition and has, or has been, continued in operation after that date;

(ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

Appellate jurisdiction of Supreme Court in appeals from High Courts in States in certain cases.

110. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) "Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court not only on the ground that any such question as aforesaid has been wrongly decided, but also on any other ground.

Explanation.—For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Appellate jurisdiction of Supreme Court in appeals from High Courts in the territory of India except the States for the time being specified in Part III of the First Schedule in other cases.

111. (1) An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in the territory of India except the States for the time being specified in Part III of the First Schedule, if the High Court certifies—

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below, in any case other than one referred to in clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything contained in article 110 of this Constitution, any party appealing to the Supreme Court under clause (1) of this article may

urge as one of the grounds in such appeal that the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided.

Special leave to appeal by the Supreme Court in certain other cases.

112. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply.

Reference to the Supreme Court by High Courts in States for the time being specified in Part III of the First Schedule in certain cases.

113. (1) If in the course of any civil, criminal or other proceeding in a High Court in any State for the time being specified in Part III of the First Schedule, any question as to the applicability or interpretation of any law of Parliament or of the Legislature of any State other than such State, which is material for the determination of any issue in such proceeding, arises, the High Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case with particular reference to such question with its own opinion thereon and refer such question to the Supreme Court for opinion.

(2) The Supreme Court may, where any such High Court refuses to state a case under clause (1) of this article, require a case to be so stated.

(3) When a case is so stated either under clause (1) or under clause (2) of this article, the High Court shall stay all proceedings until the opinion of the Supreme Court is received.

(4) The Supreme Court shall, after giving the parties an opportunity of being heard, decide the question so referred, and shall cause a copy of its opinion to be transmitted to the High Court and such High Court shall on receipt thereof proceed to dispose of the case in conformity with the opinion of the Supreme Court.

(5) The Supreme Court may at any stage return any case stated under this article in order that further facts may be stated therein.

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Enlargement of the jurisdiction of the Supreme Court.

114. (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Conferment on the Supreme Court of powers to issue certain writs.

115. Parliament may, by law, confer on the Supreme Court power to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 25 (which relates to the enforcement of fundamental rights) of this Constitution.

Ancillary powers of Supreme Court

116. Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Law declared by Supreme Court to be binding on all courts.

117. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

118. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament.

(2) Subject to the provisions of any law made in this behalf by Parliament the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the

discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Power of President to consult Supreme Court.

119. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything contained in clause (i) of the proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision, and the Supreme Court shall thereupon, after giving the parties an opportunity of being heard, decide the same and report the fact to the President.

Civil and judicial authorities to act in aid of the Supreme Court.

120. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Rules of Court, etc.

*121. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President,

*In the Supreme Court of the United States of America all the judges of the Court are entitled to participate in the hearing of every matter, and the Court never sits in divisions. The judges of that Court attach the greatest importance to this practice. The Committee is of opinion that this practice should be followed in India at least in two classes of cases, namely, those which involve questions of interpretation of the Constitution and those which are referred to the Supreme Court for opinion by the President. Whether the same practice should not be extended to other classes of cases is a matter which Parliament may regulate by law.

Item (b) giving the Court power to make rules for regulating the time to be allowed to advocates to make their submissions to the Court has also been inserted in the article. This follows the practice prevalent in the Supreme Court of the United States, where the advocates are normally allowed only one hour to argue each case, the rest of their submissions being in writing. (One member of the Committee, Shri Alladi Krishnaswami Ayyar, considers it unnecessary expressly to mention this power in this article, because in his view the position of the Supreme Court in India, in respect of its general appellate functions, is different from that of the Supreme Court of the United States.)

make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the court,

(b) rules as to the procedure for hearing appeals and other matters including the time within which appeals to the Court are to be entered and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof,

(c) rules as to the costs of and incidental to any proceedings in the court and as to the fees to be charged in respect of proceedings therein,

(d) rules as to the granting of bail,

(e) rules as to stay of proceedings, and

(f) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five:

Provided that it shall be open to every judge to sit for the said purposes unless owing to illness, personal interest or other sufficient cause he is unable to do so.

(3) No opinion for the purpose of any report under article 119 of this Constitution and no judgment shall be delivered by the Supreme Court save in open court.

(4) No such report shall be made and no judgment shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion or judgment.

Salaries, allowances and pensions of officers and servants and the expenses of the Supreme Court.

122. (1) The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of India in consultation with the President.

(2) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.

Construction of references to High Courts in States specified in Part III of the First Schedule.

123. (1) References in articles 103 and 106 of this Chapter to a High Court in, or exercising jurisdiction in, a State for the time being specified in Part III of the First Schedule shall be construed as references to any court which the President may, upon being satisfied after consultation with the Supreme Court and the Ruler of the State that such court is a court comparable to any of the High Courts in the States for the time being specified in Part I of that Schedule, declare to be a High Court for the purposes of those articles.

(2) References in articles 110 and 113 of this Chapter to a High Court in a State for the time being specified in Part III of the First Schedule shall be construed as references to the court of final jurisdiction in the State with regard to the proceeding in respect of which an appeal or reference is provided for in those articles.

CHAPTER V—Auditor = General of India

Auditor-General of India.

124. (1) There shall be an Auditor-General of India, who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

(2) The salary, allowances and other conditions of service of the Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the Second Schedule:

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General shall be fixed by the Auditor-General in consultation with the President.

(5) The salaries, allowances and pensions payable to or in respect of the Auditor-General and members of his staff shall be charged upon the revenues of India.

Duties and powers of the Auditor-General.

125. The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of India and of the Government of any State as are or may be prescribed by or under any law made by Parliament.

Explanation.—In this article the expression "law made by Parliament" includes any existing law for the time being in force in the territory of India.

Power of Auditor-General of India to give directions as to accounts.

126. The accounts of the Government of India shall be kept in such form as the Auditor-General of India may, with the approval of the President, prescribe and. in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance; with which any accounts of the Government of any State ought to be kept, it shall be the duty of the Government of the State to cause accounts to be kept accordingly.

Audit reports.

127. The reports of the Auditor-General of India relating to the accounts of the Government of India shall be submitted to the President, who shall cause them to be laid before Parliament.

PART VI

The States in Part I of the First Schedule

CHAPTER I—GENERAL

Definition.

128. In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

CHAPTER II—THE EXECUTIVE

The Governor

Governors of States.

129. There shall be a Governor for each State.

Executive power of States

130. (1) The executive power of the State Shall be vested in the Governor and may be exercised by him in accordance with the Constitution and the law.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Election of Governor.

131. The Governor of a State shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State.

Alternatively

Appointment of Governor.

*131. The Governor of a State shall be appointed by the President by warrant under his hand and seal from a panel of four candidates to be elected by the members of the Legislative Assembly of the State,

*Some of the members of the Committee are strongly in favour of this alternative, because they consider that the co-existence of a Governor elected by the people and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration.

or, where there is a Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Term of office of Governor.

132. The Governor shall hold office for a term of *five years from the date on which he enters upon his office:

Provided that—

(a) a Governor may, by resignation under his hand addressed to the Speaker of the Legislative Assembly of the State or where there are two Houses of the Legislature of the State, to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council of the State, resign his office;

(b) a Governor may, for **violation of the Constitution, be removed from office by impeachment in the manner provided in article 137 of this Constitution;

(c) a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Eligibility for re-election/re-appointment as Governor.

***133. A person who holds, or who has held, office as Governor shall be eligible for re-election/re-appointment to that office once, but only once.

Qualifications for election as Governor.

134. (1) No person shall be eligible for election as Governor unless he is a citizen of India and has completed the age of thirty five years.

*The Committee is of opinion that the term of office of the Governor should be five years instead of four years in view of the change suggested by the Committee in the life of the Assembly from four years to five years.

**The Committee is of opinion that the Governor should be impeached only for violation of the Constitution as in the case of the President and not for any misbehaviour.

***If the second alternative is adopted in article 131, the word "re-appointment" will have to be used in this article instead of the word "re-election"

(2) A person shall not be eligible for election as a Governor of a State—

(a) if he is disqualified for being chosen as a member of the Legislative Assembly of the State:

Provided that it shall not be necessary for any such person to be a resident of the State; or

(b) if he holds any office or position of emolument under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Alternatively

Qualifications for appointniont as Governor.

*134. (1) No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

(2) A person shall not be eligible for appointment as Governor of a State if he is disqualified for being chosen as a member of the Legislative Assembly of the State*

Provided that it shall not be necessary for any such person to be a resident of the State.

Conditions of Governor's office.

135. (1) The Governor shall not be a member either of Parliament or of the Legislature of any State for the time being specified in the First

*If the second alternative is adopted in article 131, this alternative will have to be adopted in the present article.

Schedule, and if a member of Parliament or of the Legislature of any such State be elected/*appointed Governor, he shall be deemed to have vacated His seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence, and there shall be paid to the Governor such emoluments and allowances as may be determined by the Legislature of the State by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

Affirmation or oath by the Governor or person discharging the functions of the Governor before entering office.

136. Every Governor and every person discharging the functions of the Governor shall before entering upon his office make and subscribe in the presence of the members of the Legislature of the State an affirmation or oath in the following form, that is to say:—

"I, A. B., do solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of _____ (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of_____ (name of the State)."

Procedure for impeachment of the Governor.

137. (1) When a Governor is to be impeached for violation of the Constitution, the charge shall be preferred by the Legislative Assembly of the State.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after a notice in writing signed by not less than thirty members of the Assembly has been given of their intention to move the resolution, and

*If the second alternative is adopted in article 131, the word "appointed" will have to be used in clause (1) of this article instead of the word "elected".

(b) the resolution has been supported by not less than two-thirds of the total membership of the Assembly.

(3) When a charge has been so preferred, the Speaker of the Assembly shall inform the Chairman of the Council of States and thereupon the Council of States shall appoint a committee which may consist of or include persons who are not members of the Council, to investigate the charge and the Governor shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the Council of States declaring that the charge preferred against the Governor has been sustained, such resolution shall have the effect of removing the Governor from his office as from the date on which the resolution is communicated to the Speaker of the Assembly.

Power of the Legislature of the State/the President to provide for the discharge of the functions of the Governor in certain contingencies.

*138. The Legislature of a State may make such provision as it thinks fit/<u>The President may make such provision as he thinks fit</u> for the discharge of the functions of the Governor of the/a State in any contingency not provided for in this Chapter.

*If the second alternative is adopted in article 131, the words "The President may make such provision as he thinks fit" will have to be used in this article instead of the words "The Legislature of a State may make such provision as it thinks fit" and the words "a State" will have to be used for the words "the State" in this article.

The Committee is of opinion that whether the Governor is elected by the people or appointed by the President from a panel elected by the Legislature, it is unnecessary to have **a** Deputy Governor. Unlike the Vice-President at the Centre, the Deputy Governor cannot be made *ex-officio* Chairman of the Upper House, because in most of the States there will be no Upper House. The result is that the Deputy Governor will have no definite function to perform so long as the Governor is there. The only ground for creating the office of a Deputy Governor appears to be that there must be some person to step into the position of the Governor upon the occurrence of a sudden vacancy. The making of such a provision can be left to the Legislature of the State or to the President, as the case may be, *e.g.,* the Legislature or the President may provide in advance that, in the event of a sudden vacancy occurring in the office of the Governor, the Chief Justice shall discharge the functions of the Governor (*cf.* paragraph. 6 of the Letters Patent constituting the office of Governor-General of the Union of South Africa, where it is provided that the Chief Justice of South Africa may, in certain contingencies, exercise the powers of the Governor-General.)

Time of holding elections/ time of holding elections to constitute a panel for the filling of vacancies in the office Governor.

*139. (1) An election/An election to constitute a panel for the purpose of filling a vacancy caused by the expiration of the term of office of a Governor shall be completed before the expiration of the term.

(2) An election /An election to constitute a panel for the purpose of filling a vacancy in the office of Governor occurring by reason of his death, resignation or removal or otherwise shall be held as soon as possible after the occurrence of the vacancy and the person elected/appointed to fill the vacancy shall be entitled to hold office for the full term of five years as provided in article 132 of this Constitution.

Matters relating to or connected with the election of a Governor/ the election to constitute a panel for the appointment of a Governor.

**140. (1) All doubts and disputes arising out of or in connection with the election of a Governor/the election to constitute a panel for the purpose of the appointment of a Governor shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) Subject to the provisions of this Constitution, the Legislature of the State may, by law, regulate any matter relating to or connected with the election of a Governor/the election to constitute a panel for the purpose of the appointment of a Governor.

Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

141. The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence, of any person convicted of any offence against any law relating to a matter with respect to which the Legislature of the State has power to make laws.

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*If the second alternative is adopted in article 131, then the words "An election to constitute a panel" will have to be used in clauses (1) and (2) of this article instead of the words "An election" and the word "appointed" will have to be used in clause (2) of this article instead of the word "elected".

**If the second alternative is adopted in article 131, then the words "the election to constitute a panel for the purpose of the appointment of a Governor" will have to be used in clauses (1) and (2) of this article instead of the words "the election of a Governor".

Extent of executive power of States.

142. Subject to the provisions of this Constitution, the executive power of each State shall extend—

(a) to the matters with respect to which the Legislature of the State has power to make laws, and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable under any agreement entered into with any State or group of States for the time being specified in Part III of the First Schedule under article 236 or article 237 of this Constitution.

Council of Ministers

Council of ministers to aid and advise Governor.

143. (1) There shall be a Council of ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

Other provisions as to ministers.

144. (1) The Governor's ministers shall be appointed by him and shall hold office during his pleasure:

Provided that in the States of Bihar, Central Provinces and Berar and Orissa, there shall be a minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) Before a minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(3) A minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a minister.

(4) In choosing his ministers and in his relations with them the Governor shall be generally guided by the Instructions set out in the Fourth Schedule, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions.

(5) The salaries and allowances of ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determine, shall be as specified in the Second Schedule.

(6) The functions of the Governor under this article with respect to the appointment and dismissal of ministers shall be exercised by him in his discretion.

The Advocate=General for the State

Advocate-General for State.

145. (1) The Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court, to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is reappointed.

(4) The Advocate-General shall receive such remuneration as the Governor may determine.

Conduct of Government Business

Conduct of business of the Government of a State.

146. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

Duties of Chief Minister as respects the furnishing of information to Governor, etc.

147. It shall be the duty of the Chief Minister of each State—

(a) to communicate to the Governor of the State all decisions of the Council of ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information, relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.

CHAPTER III—The State Legislature

General

Constitution of Legislatures in States in Part I of the First Schedule.

148. (1) For, every State there shall be a Legislature which shall consist of the Governor; and

(a) in the States of_____,* two Houses,

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it shall be known as the Legislative Assembly.

*The names of these States will be filled in when it has been ascertained which of the States are to have two Houses.

Composition of the Legislative Assemblies.

149. (1) Subject to the provisions of articles 294 and 295 of this Constitution the Legislative Assembly of each State shall be composed of members chosen by direct election.

(2) The election shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or any law made by the Legislature of the State on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections.

(3) The representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis of the population of that constituency as ascertained at the last preceding census and shall, save in the case of the autonomous districts of Assam, be on a scale of not more than one representative for every lakh of the population:

Provided that the total number of members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty.

(4) Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as the Legislature of the State may by law determine:

Provided that such readjustment shall not affect representation to the Legislative Assembly until the dissolution of the then existing Assembly.

Composition of the Legislative Councils.

150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent of the total number of members in the Legislative Assembly of that State.

(2) Of the total number of members in the Legislative Council of a State—

(a) one-half shall be chosen from panels of candidates constituted under clause (3) of this article;

(b) one-third shall be elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote; and

(c) the remainder shall be nominated by the Governor.

(3) Before the first general election and, thereafter, before each triennial election under clause (2) of article 151 of this Constitution to the Legislative Council of a State, five panels of candidates shall be formed, of which one shall contain the names of representatives of universities in the State and the remaining four shall respectively contain the names of persons having special knowledge or practical experience in respect of the following subjects, namely:—

(a) literature, art and science;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services.

(4) Each panel of candidates constituted under clause (3) of this article shall contain at least twice the number to be elected from such panel.

(5) For bye-elections clauses (3) and (4) of this article shall have effect subject to such adaptations and modifications as may be prescribed by the Legislature of the State by law.

Duration of State Legislatures.

151. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for = five years from the date appointed for its first meeting and the expiration of the said period of *five years shall operate as a dissolution of the Assembly.

*The Committee has inserted "five years" instead of "four years" as the life of the Assembly, as it considers that under the Parliamentary system of Government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire as soon as may be on the expiration of every third year in accordance with the provisions made in that behalf by the Legislature of the State by law.

Age-limit for membership of the State Legislature.

152. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age and in the case of a seat in a Legislative Council, not less than thirty-five years of age.

Sessions of the State Legislature, prorogation and dissolution.

153. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this article, the Governor may from time to time—

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the House or Houses;

(c) dissolve the Legislative Assembly,

(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion.

Right of Governor to address and send messages to the Houses.

154. (1) The Governor may address the Legislative Assembly or in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State whether with respect to a Bill then pending in the

Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special address by the Governor at the commencement of each session and discussion in the Legislature of matters referred to in the address.

*155. (1) At the commencement of every session, the Governor shall address the Legislative Assembly or in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the cause of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for a discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

Rights of ministers and Advocate-General as respects the Houses.

156. Every minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses and any joint sitting of the Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of The State Legislature

The Speaker and Deputy Speaker of the Legislattive Assembly.

157. Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

*This clause which is based on the practice prevalent in the Parliament of the United Kingdom has been inserted by the Committee as it considers that it will prove useful in our Constitution also.

Vacation and, resignation of, and removal from the office of, Speaker and Deputy Speaker.

158. A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

Power of the Deputy Speaker or other persons to perform the duties of the office of or to act as, Speaker.

159. (1) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker or, if he is also absent such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

The Chairman and Deputy Chairman of the Legislative Council.

160. The Legislative Council of every State having such Council, shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Vacation and resignation of, and removal from, the office of Chairman and Deputy Chairman.

161. A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other persons to perform the duties of the office of, or to act as, Chairman.

162. (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or if the office of Deputy Chairman is also vacant by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council, the Deputy Chairman or, if he is also absent such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

Salaries and allowances of and Deputy Speaker and the Chairman and Deputy Chairman.

163. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council such salaries and allowances as may be respectively fixed by the Legislature of the State by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Conduct of Business

Voting in Houses ; power of Houses to act notwithstanding vacancies and quorum.

164, (1) Save as provided in this Constitution, all questions in a House or a joint sitting of two Houses of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman or person acting as such.

The Speaker or Chairman or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman or person acting as such either to adjourn the House or to suspend the meeting until there is a quorum.

The quorum shall be ten members or one-sixth of the total number of members of the House, whichever is greater.

Disqualifications of Members

Declaration by members

165. Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor or some person appointed in this behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

Vacation of seats.

166. (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of the Legislature of a State and if a person is chosen a member both of Parliament and of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the Governor of the State, that person's seat in the Legislature of the State shall become vacant, unless he has previously resigned his seat in Parliament.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Disqualifications for membership.

167. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

*(d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power;

(e) if he is so disqualified by or under any law made by the Legislature of the State.

(2) For the purposes of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule by reason only that—

(a) he is a minister either for India or for any State for the time being specified in Part I of the First Schedule; or

*The Committee has inserted this sub-clause following the provisions of section 44 (i) of the Australia Constitution Act,

(b) he is a minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Penalty for sitting and voting before making declaration under article 165 or when not qualified or when disqualified.

163. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 165 of this Constitution, or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Legisture of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Privileges and Immunities of Members

Privileges, etc, of members.

169. (1) Subject to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects the privileges and immunities of members of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law, and until so defined shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State as they apply in relation to members of that Legislature.

Salaries and allowances of members

170. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law, and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State.

Legislative Procedure

Provisions as to introduction and passing of Bills.

171. (1) Subject to the provisions of articles 173 and 182 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 172 and 173 of this Constitution, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Joint sitting of both Houses in States having Legislative Councils in certain eases.

172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council, more than six months elapse from the date of the reception of the Bill by the Council without the Bill being passed by both Houses, the Governor may, unless the Bill has lapsed by reason of a dissolution of the Legislative Assembly, summon the Houses to

meet in a joint sitting for the purposes of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days.

(3) If at the joint sitting of the two Houses summoned in accordance with the provisions of this article the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed, by both Houses:

Provided that at a joint sitting—

(a) if the Bill has not been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

Special procedure in respect of Money Bills.

*173. (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative

*This article and all other provisions in this Chapter relating to "Money Bills" have been inserted to give effect to the recommendations of the Expert Committee on the Financial Provisions of the Constitution.

Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Definition of "Money Bills."

174. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) supply;

(d) the appropriation of the revenues of the State;

(e) the declaring of any expenditure to be expenditure charged on the revenues of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the revenues of the State or the custody or issue of such money or the audit of the accounts of the State; or

(g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under the last preceding article, and when it is presensed to the Governor for assent under the next succeeding article, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Assent to Bills.

175. A Bill which has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President :

Provided that where there is only one House of the Legislature and, the Bill has been passed by that House, the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specifed provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his Message and, when a Bill is so returned the House shall reconsider it accordingly and if the Bill is passed

again by the House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

Bills reserved for consideration

176. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that where the Bill is not a Money Bill the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the proviso to the last preceding article and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by them with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

Annual financial statement.

177. (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part of this Constitution referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of the State; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of each State—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the emoluments and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly, and in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged.

Procedure in Legislature with respect to estimates.

178. (1) So much of the estimates as relates to expenditure charged upon the revenues of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

Authentication of schedule of authorised expenditure.

179. (1) The Governor shall authenticate by his signature a schedule specifying—

(a) the grants made by the Assembly under the last preceding article;

(b) the several sums required to meet the expenditure charged on the revenues of the State, but not exceeding in any case, the sum shown in the statement previously laid before the House or Houses.

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of the Stale shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

180. If in respect of any financial year further expenditure from the revenues of the State becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the House or Houses a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Excess grants

*181. If in any financial year expenditure from the revenues of the State has been incurred on any service for which the vote of the Legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of articles 173 and 179 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

Special provisions as to financial Bills.

182. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 174 of this Constitution shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

*This article has been inserted to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

Rules of Procedure.

183. (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Provincial Legislature for the State shall have effect in relation to the Legislature of that State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the Legislative Assembly*, or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

*The Committee is of opinion that the Speaker of the Assembly should preside at a joint sitting of the two Houses as the Assembly is the more numerous body.

Language to be used in the Legislatures of States.

184. (1) In the Legislature of a State, business shall be transacted in the language or languages generally used in that State or in Hindi or in English.

(2) The Speaker of the Legislative Assembly or the Chairman of the Legislative Council may, whenever he thinks fit, make arrangements for making available in the Assembly or the Council, as the case may be, a summary in any language generally used in the State or in English of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

Restrictions on discussion in the Legislatures of States

185. (1) No discussion shall take place in the Legislature of a State with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.

(2) In this article, the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of Part V of this Constitution.

Courts not to inquire into proceedings of the Legislature.

186. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure

(2) No officer or other member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER IV—Legislative Power of the Governor

Power of Governor to promulgate Ordinances during recess of Legislature.

187. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the

Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if an Act of the Legislature of the State containing the same provisions would under the provisions of this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution dis-approving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as tie case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to

an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

CHAPTER V—Provisions in Cases of Grave Emergencies

Power of Governor in grave emergencies.

188. (1) If at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State and that it is not possible to carry on the Government of the State in accordance with the provisions of this Constitution, he may, by proclamation, declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion, and any such proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the proclamation including-provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the Governor to suspend, either in whole or in part, the operation of any provision of this Constitution relating to High Courts.

(2) The proclamation shall be forthwith communicated by the Governor to the President who may, thereupon either revoke the proclamation or take such action as he considers appropriate in exercise of the emergency powers vested in him under article 278 of this Constitution.

(3) A proclamation under this article shall cease to operate at the expiration of two weeks unless revoked earlier by the Governor or by the President by public notification.

(4) The functions of the Governor under this article shall be exercised by him in his discretion.

CHAPTER VI—Scheduled and Tribal Areas

Definitions.

189 In this Constitution—

(a) the expression "scheduled areas" means the areas specified in Parts I to VII of the table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate;

(b) the expression "tribal areas" means the areas specified in Parts I and II of the table appended to paragraph 19 of the Sixth Schedule.

Administration of scheduled and tribal areas.

190. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I of the First Schedule.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

CHAPTER VII—The High Courts in the States

Meaning of "High Court".

191. (1) For the purposes of this Constitution the following courts shall, in relation to the territory of India except the States for the time being specified in Part III of the First Schedule, be deemed to be High Courts, that is to say,—

(a) the High Courts in Calcutta, Madras, Bombay, Allahabad, Patna and Nagpur, the High Court of East run jab and the Chief Court in Oudh;

(b) any other court in any of these States constituted or re-constituted under this Chapter as a High Court; and

(c) any other court in any of these States which may be declared by the appropriate Legislature by law to be a High Court for the purposes of this Constitution:

Provided that if provision is made by the appropriate Legislature for the establishment of a High Court to replace any court or courts mentioned in this clause, then, as from the establishment of the new court, this article shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) Save as otherwise provided, the provisions of this Chapter shall apply to every High Court referred to in clause (1) of this article.

Constitution of High Courts.

192. Every High Court shall be a court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that Court.

Appointment and conditions of the office, of a High Court.

193. (1) Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years *or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State:

*The provision for a higher age than 60 years does not exist in the Government of India Act, 1935. The result is that the best men from the Bar often refuse appointments on the Bench because under the existing age-limit of 60 years they would not have time to earn a full pension. It hay also been pointed out that when the age-limit for judges of the Supreme Court is 65 years it would not be possible to hold that a judge was too old for a High Court after 60. In view of the different conditions prevailing in different States, the Committee has added the underlined words in this article so as to enable the Legislature of each State to fix any age-limit not exceeding 65 years.

Provided that—

(a) a judge may, by writing under his hand addressed to the Governor, resign his office;

(b) a judge may be removed from his office by the President in the manner provided in clause (4) of article 103 of this Constitution for the removal of a judge of the Supreme Court;

(c) the office of the judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court.

(2) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and—

(a) has held for at least ten years a judicial office in any State in or for which there is a High Court; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I.—For the purposes of this clause—

(a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which a person held judicial office after he became an advocate;

(b) in computing the period during which a person has held judicial office in a State; for the time being specified in Part I or Part II of the First Schedule or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he held judicial office in any area which was comprised before the fifteenth day of August, 1947, within British India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

Explanation II.—In sub-clauses (a) and (b) of this clause, the reference to a High Court shall be construed as including a reference to a court in a State for the time being specified in Part III of the First Schedule which is a High Court for the purposes of articles 103 and 106 of this Constitution.

Application of certain provisions relating to Supreme Court to High Courts.

194. The provisions of clauses (4) and (5) of article 103 of this Constitution shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

Declaration by judges of High Courts before entering office.

195. Every person appointed to be a judge of a High Court in a State shall, before he enters upon his office, make and subscribe before the Governor of the State or some person appointed in that behalf by him a declaration according to the form set out for the purpose in the Third Schedule.

Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.

*196. No person who has held office—

(a) as a judge of a High Court, or

(b) as an additional judge or temporary judge of a High Court on having been recruited from the Bar,

shall plead or act in any Court or before any authority within the territory of India.

Salaries, etc. of judges.

197. The judges of each High Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by the Legislature of the State in which the Court has its principal seat, and until they are so fixed, shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule:

Provided that the salary of the Chief Justice of a High Court shall not be less than four thousand

*The Committee is of opinion that a person who has held office as judge of a High Court should be prohibited from practicing in any court or before any authority and so also persons who have held office as additional judges or temporary judges of the court on having been recruited from the Bar.

rupees per month and the salary of any other judge of a High Court shall not be less than three thousand and five hundred rupees per month:

Provided further that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Temporary judges.

198. (1) When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

(2) (a) When the office of any other judge of a High Court is vacant or when any such judge is appointed to act temporarily as a Chief Justice, or is unable to perform the duties of his office by reason of absence or otherwise, the President may appoint a person duly qualified for appointment as a judge to act as a judge of that court.

(b) The person appointed shall, while so acting, be deemed to be a judge of the court.

(c) Nothing contained in this clause shall prevent the President from revoking any appointment made under this clause.

Additional judges.

199. If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court, it appears to the President that the number of the judges of the court should be for the time being increased, the President may, subject to the foregoing provisions of this Chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

Attendance of retired judges at sittings of High Courts

*200. Notwithstanding anything contained in this Chapter, the Chief Justice of a High Court may at any time, subject to the provisions of this article, request any person who has held the office of a judge of that court to sit and act as a judge of the court, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of that court unless he consents so to do.

Jurisdiction of existing High Courts.

201. Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration, of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction of any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

Power of High Courts to issue certain writs.

202. (1) Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of any of the rights conferred by Part III of this Constitution and for any other purpose.

*The employment of retired judges follows the practice in the United Kingdom and in the United States of America.

(2) The power conferred on a High Court by clause (1) of this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 25 of this Constitution.

Administrative functions of High Courts.

203. (1) Every High Court shall have superintendence over all courts throughout the territories in relation to which it exercises jurisdiction.

(2) The High Court may—

(a) call for returns from such courts;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction, or withdraw such suit or appeal from any such court to itself;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) of this article shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

Transfer of certain cases to High Court for trial.

204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it shall withdraw the case to itself and dispose of the same.

Explanation.—In this article, "High Court" includes a court of final jurisdiction in a State for the time being specified in Part III of the First Schedule with regard to the case so pending.

Salaries, allowances and pensions of officers and servants and the expenses of High Courts.

205. (1) The salaries, allowances and pensions payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the court in consultation with the Governor of the State in which the High Court has its principal seat.

(2) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the court shall form part of those revenues.

Power to constitute or re-constitute High Court.

206. (1) The Legislature of a State for the time being specified in Part I of the First Schedule may, by law, constitute a High Court for the State or any part thereof or reconstitute in like manner any existing High Court for that State or for any part thereof, or where there are two High Courts in that State, amalgamate those courts.

(2) Where any court is reconstituted, or two courts are amalgamated, as aforesaid, the law made by the Legislature of the State shall provide for—

(a) the continuance in their respective offices of all the existing judges of the court or courts and of such of the existing officers and servants of the court or courts as may be deemed necessary; and

(b) the carrying on before the reconstituted court or the new court of all pending matters.

and may contain such other provision as may appear to be necessary by reason of the re constitution or amalgamation.

Extension of or exclusion from the jurisdiction of High Courts.

207. Parliament may by law—

(a) extend the jurisdiction of a High Court to, or

(b) exclude the jurisdiction of a High Court from,

any State other than, or any area not within, the State in which the High Court has its principal seat:

Provided that no Bill for any such purpose shall be introduced in either House of Parliament unless—

(i) where the jurisdiction is to be extended to or excluded from a State for the time being specified in Part I or Division A of Part III of the First Schedule or any area within such State, the consent of such other State has been obtained; and

(ii) where the jurisdiction is to be extended, the consent of the State in which the High Court has its principal seat has also been obtained

Restrictions on the power of the Legislatures of States to make laws with respect to jurisdiction of a High Court in a State having jurisdiction outside that State.

208. Where a High Court exercises jurisdiction in relation to any area outside the State in which it has its principal seat, nothing in this Constitution shall be construed—

(a) as empowering the Legislature of the State in which the court has its principal seat to increase, restrict or abolish that jurisdiction;

(b) as empowering the Legislature of a State for the time being specified in Part I or Part III of the First Schedule in which any such area is situate, to abolish that jurisdiction; or

(c) as preventing the Legislature having power to make laws in that behalf for any such area, from passing, subject to the provisions of clause (b) of this article, such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

Interpretation.

209. Where a High Court exercises jurisdiction in relation to more than one State or in relation to a State and an area not forming part of the State—

(a) references in this Chapter to the Governor in relation to the judges of a High Court shall be construed as references to the Governor of the State in which the court has its principal seat;

(b) the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a refer-

ence to the approval thereof by the Governor or the Ruler of the State in which the subordinate court is situate, or if it is situate in an area not forming part of any State for the time being specified in Part I or Part III of the First Schedule, by the President; and

(c) references to the revenues of the State shall be construed as references to the revenues of the State in which the court has its principal seat.

CHAPTER IX—*Auditors-in-Chief for the States

Auditor-in-Chief for a State.

210. (1) The Legislature of a State for the time being specified in Part I of the First Schedule may by law provide for the appointment of an Auditor-in-Chief for the State and when such provision has been made an Auditor-in-Chief for that State may be appointed by the Governor in his discretion and the Auditor-in-Chief so appointed shall only be removed from office in like manner and on the like grounds as a judge of the High Court of the State.

(2) An Act passed under clause (1) of this article by the Legislature of a State shall provide that no appointment of an Auditor-in-Chief for the State shall be made until the expiration of at least three years from the date of the publication after assent of the Act.

(3) Every such Act shall prescribe the conditions of service of the Auditor-in-Chief and the duties which shall be performed and the powers which shall be exercised by the Auditor-in-Chief in relation to the accounts of the State and shall declare the salary, allowances and pension payable to or in respect of the Auditor-in-Chief to be charged on the revenues of the State.

*The Committee is of opinion that the person performing the functions of an Auditor-General in a State should be designated as Auditor-in-Chief to distinguish him from the Auditor-General of India.

(4) The Auditor-in-Chief of the State shall be eligible for appointment as Auditor-General of India or as Auditor-in-Chief for any other State for the time being specified in Part I of the First Schedule but not for any other appointment either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-in-Chief of a State shall be fixed by the Auditor-in-Chief in consultation with the Governor and shall be charged upon the revenues of the State.

(6) Nothing in this article shall derogate from the power of the Auditor-General of India to give such directions in respect of the accounts of the States for the time being specified in Part I of the First Schedule as are mentioned in article 126 of this Constitution.

Audit reports

211. The reports of the Auditor-General of India or the Auditor-in-Chief of the State, as the case may be, relating to the accounts of a State for the time being specified in Part I of the First Schedule shall be submitted to the Governor of the State, who snail cause them to be laid before the Legislature of the State.

PART VII

*The States in Part II of the First Schedule

Administration of States in Part. II of the First Schedule.

212. (1) Subject to the other provisions of this Part, a State for the time being specified in Part II of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Governor or Ruler of a neighbouring State:

Provided that the President shall not act through the Governor or Ruler of a neighbouring State save after—

(a) consulting the Governor or Ruler concerned; and

(b) ascertaining in such manner as the President considers most appropriate the wishes of the people of the State to be so administered.

**(2) Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India shall be administered in all respects as if the State were for the time being specified in Part II of the First Schedule; and, accordingly, all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State.

*The Committee is of opinion that it is not necessary to make any detailed provisions with regard to the Constitution of the States specified in Part II of the First Schedule which are at present Chief Commissioners' Provinces on the lines suggested by the *ad hoc* Committee on Chief Commissioners' Provinces in their recommendations. The revised provisions proposed in this Part would enable the recommendations of the *ad hoc* Committee, if adopted by the Constituent Assembly, to be given effect to by the President by order.

**This clause has been inserted by the Committee to provide for the administration of State.; in Part III of the First Schedule (*e.g.* the Orissa States) which have ceded full and exclusive authority, jurisdiction and powers to the Government of India.

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Creation or continuance of local Legislature or Council of Advisors.

213. The President may, by order, create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—

(a) a local Legislature, or

(b) a Council of Advisers

or both, with such constitution, powers and functions, in each case, as may be specified in the order.

Coorg.

214. Until other provision is made in this behalf by the President, the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall remain unchanged.

Part VIII

The Territories in Part IV of the First Schedule and other Territories Not Specified in that Schedule

Administration of territories specified in Part IV of the First Schedule and other territories not specified in that Schedule.

215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or other authority to be appointed by him.

(2) The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to such territory.

PART IX

Relations between the Union and the States

CHAPTER I—Legislative Relations

DISTRIBUTION OF LEGISLATIVE POWERS

Extent of laws made by Parliament and by the Legislatures of States.

216. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Subject-matter of laws made by Parliament and by the Legislatures of States.

*217. (1) Notwithstanding anything in the two next succeeding clauses, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in the next succeeding clause, Parliament and, subject to the preceding clause, the Legislature of any State for the time being specified in Part I of the First Schedule also, have power to make laws with respect to any of the matters enumerated in List III in the

*Shri Alladi Krishnaswami Ayyar was of opinion that instead of following the old plan of legislative distribution this clause might, in view of the fact that the residuary power is to be in Parliament, begin with the legislative powers of the State, then deal with the concurrent powers and then with the legislative powers of Parliament. As the question was merely one of form, the majority of the members preferred not to disturb the existing arrangement.

Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to the two preceding clauses, the Legislature of any State for the time being specified in Part I of the First Schedule has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included for the time being in Part I or Part III of the First Schedule notwithstanding that such matter is a matter enumerated in the State List.

Legislation with respect to the Supreme Court.

*218. Parliament has the exclusive power to make laws with respect to the constitution, organisation, jurisdiction and powers of the Supreme Court.

Power of Parliament to provide for the establishment of certain additional courts.

219. Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List.

Legislation with respect to constitution and organisation of High Courts.

*22G. (1) The Legislature of a State for the time being specified in Part I of the First Schedule has the exclusive power to make laws with respect to the constitution and organisation of any High Court having its principal seat within such State.

(2) Parliament has power to make laws with respect to the constitution and organisation of any High Court having its principal seat in a State for the time being specified in Part II of the First Schedule.

*Some members of the Committee consider that articles 218, 220, 221 and 222 are not necessary in view of article 217.

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Legislation with respect to jurisdiction and powers of High Courts.

*221. (1) Parliament has the exclusive power to make laws regarding the jurisdiction and powers of any High Court with respect to any of the matters enumerated in the Union List.

(2) The Legislature of a State for the time being specified in Part I of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction has the exclusive power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the State List.

(3) Parliament and also the Legislature of a State for the time being specified in Part I of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction have power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the Concurrent List.

(4) Parliament has power to make laws regarding the jurisdiction and powers of a High Court in relation to a State for the time being specified in Part II of the First Schedule or any area within such State with respect to any of the matters enumerated in the State List.

Legislation with respect to the procedure to be followed by High Courts in civil and criminal matters.

*222. Parliament and also the Legislature of a State for the time being specified in Part I of the First Schedule in which a High Court has its principal seat have power to make laws with respect to the procedure to be followed by such High Court in civil and criminal matters.

Residuary powers of legislation.

223. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

*Some members of the Committee consider that articles 218, 220, 221 and 222 are not necessary in view of article 217.

Restriction on powers of Parliament to make laws with respect to certain matters in relation to States in Part III of the First Schedule.

*224. Notwithstanding anything in clause (1) of article 217 of this Constitution—

(a) Parliament shall not have power to make laws with respect to any right relating to posts and telegraphs in any State or group of States for the time being specified in Part III of the First Schedule subsisting at the date of commencement of this Constitution until such right is extinguished by agreement between the Government of India and that State or group of States or is acquired by the Government of India:

Provided that nothing in this clause shall prevent Parliament from making any law for the regulation and control of posts and telegraphs in such State or group of States;

(b) the power of Parliament to make laws with respect to telephones, wireless, broadcasting and other like forms of communication in any State for the time being specified in Part III of the First Schedule shall extend only to the making of laws for their regulation and control;

(c) the power of Parliament to make laws with respect to corporations shall not include the power to make laws with respect to the incorporation, regulation and winding up of corporations owned or controlled by a State for the time being specified in Part III of the First Schedule and carrying on business only within that State.

Extent of power to legislate for States in Part III of the First Schedule.

225. Notwithstanding anything in this Chapter, the power of Parliament to make laws for a State or a group of States for the time being specified in Part III of the First Schedule shall be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Government of India and the limitations contained therein.

* The Committee is of opinion that some articles of this Chapter will require rearrangement before the Constitution is finally passed by the Constituent Assembly.

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

*226. Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

227, (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Inconsistency between laws made by Parliament under articles 226 and 227 and laws made by the Legislatures of States.

**228. Nothing in articles 226 and 227 of this Constitution shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament,

* The Committee is of opinion that power should be provided for Parliament to legislate with respect to any matter in the State List when it assumes national importance; and has inserted this article for the purpose.

** The Committee by a majority has decided that when Parliament makes a law with respect to any matter in the State List in the national interest it should be treated as akin to a matter in the Concurrent List, but Shri Alladi Krishnaswami Ayyar is against the retention of power of legislation to the States in such cases as in his opinion the retention of such power would offer a premium for the union gradually encroaching on the State field and, striking at the federal structure of the constitution.

whether passed before or after the law made by the Legislature of the State shall prevail, and the Jaw made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Power of Parliament to legislate for one or more States by consent and adoption of such legislation by any other State.

229. (1) If it appears to the Legislature or Legislatures of one or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the State or States except as provided in articles 226 and 227 of this Constitution should be regulated in such State or States by Parliament by law, and a resolution or resolutions to that effect is or are passed by the House or, where there are two Houses, by both the Houses of the Legislature of the State or of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such State or States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or. where there are two Houses, by each of the Houses of the Legislature of that State.

*(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Legislation for giving effect to international agreements.

**230. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries.

* The Committee is of opinion that an Act passed by Parliament with the consent of the States should not he allowed to be amended or repealed by any Act of the Legislature of any State to which it applies, but should be amended or repealed only by an Act of Parliament passed or adopted in the same manner in which the principal Act was passed or adopted. This is in conformity with the provisions of section 51 (*xxxvii*) read with section 109 of the Commonwealth of Australia Constitution Act.

** The Committee is of opinion that Parliament should have unfettered power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any foreign country or countries.

Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

231. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law regarding a matter with respect to which Parliament has power to make laws, then, subject to the provisions of clause (2) of this article, the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State for the time being Specified in Part I of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or any existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repeating the law so made by the Legislature of the State.

Restriction on Legislative Powers

Requirements as to recommendations to be regarded as matters of procedure only.

232. No Act of Parliament or of a Legislature of a State for the time being specified in Part I of the First Schedule and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given—

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the President, by the President.

CHAPTER II—Administrative Relations

General

Obligation of States and the Union.

233. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for this purpose.

Duty of States not to impede or prejudice authority of the Union.

234. (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

Power of the Union to confer powers, etc. on States in certain cases.

235. (1) Notwithstanding anything in this Constitution, the President may with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and

impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Power of the Union to undertake legislative, executive or judicial functions in certain States.

236. (1) The Government of India, may by agreement with any State for the time being specified in Part III of the First Schedule, but subject to the provisions of this Constitution in regard to the relationship between the Union and such State, undertake any executive, legislative or judicial functions vested in that State.

(2) The Government of India may also enter into such an agreement with the Government of any Indian State not specified for the time being in the First Schedule, but every such agreement shall be subject to, and governed by, the law relating to the exercise of foreign jurisdiction for the time being in force.

Explanation.—In this clause, the expression "Indian State" means any territory, not being part of the territory of India which the President recognises as being such a State.

(3) If an agreement entered into with any State under clause (1) of this article provides for any matter with respect to which provision has been already made in an agreement entered into with such a State under article 237 of this Constitution by the Government of any State for the time being specified in Part I of the First Schedule, then the latter agreement shall, in so far as it provides for such matter, be deemed to be revoked and of no effect on and from the date of conclusion of the former agreement.

(4) On an agreement under clause (1) of this article being concluded between the Union and a State for the time being specified in Part III of the First Schedule—

(a) the executive power of the Union shall extend to any matter specified in that behalf in such agreement;

(b) Parliament shall have power to make laws with respect to any matter specified in that behalf in such agreement; and

(c) the Supreme Court of India shall, subject to the provisions of clause (2) of article 114 of this Constitution, have jurisdiction with respect to any matter specified in that behalf in such agreement.

Power of States in Part I of the First Schedule to undertake legislative, executive or judicial functions in a State in Part III of the First Schedule.

237. (1) It shall be competent for the Government of a State for the time being specified in Part I of the First Schedule with the previous sanction of the President to undertake, by an agreement made in that behalf with any State for the time being specified in Part III of the First Schedule, any legislative, executive or judicial functions vested in the latter State, if such agreement relates to a matter which is enumerated in the State List or the Concurrent List.

(2) On an agreement under clause (I) of this article being concluded between a State for the time being specified in Part I of the First Schedule and a State for the time being specified in Part III of that Schedule—

(a) the executive power of the State specified in Part I of the said Schedule shall extend to any matter specified in that behalf in such agreement;

(b) the Legislature of the State specified in Part I of the said Schedule shall have power to make laws with respect to any matter specified in that behalf in such agreement; and

(c) the High Court and other appropriate courts in the State specified in Part I of the said Schedule shall have jurisdiction with respect to any matter specified in that behalf in such agreement.

Public acts, records and judicial proceedings.

*238. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) of this article shall be proved and the effect thereof determined shall be as provided by law.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law:

Provided that the provisions of clauses (1) and (3) of this article shall not apply to public acts, records and judicial proceedings of, and the final judgment or order delivered or passed by civil courts in, any State for the time being specified in Part III of the First Schedule unless Parliament has, under the terms of any agreement entered into in that behalf by such State with the Union, power to make laws with respect to the matters enumerated in entries 2, 4 and 5 of the Concurrent List.

Interference with Water-Supplies

Complaints as to interference with water supplies

239. If it appears to the Government of any State for the time being specified in Part I or Part III of the First Schedule that the interests of that State, or of any of the inhabitants thereof, in the water from any natural source of supply in any State have been, or are likely to be affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

* The Committee is of opinion that this article should more-appropriately be included in this Chapter than in Part III dealing with Fundamental Rights.

The Committee is further of opinion that effect ought not to be given to the provisions of this article in relation to every State for the time being specified in Part III of the First Schedule as the laws relating to subjects, such as Civil Procedure, Criminal Procedure and Evidence, enumerated in the Concurrent List may be different in different States. The Committee has therefore revised this clause so as to restrict its application only to such of those States as have acceded to the Union in respect of such subjects in the Concurrent List.

(b) the failure of any authority to exercise any of their powers.

with respect to the use, distribution or control of water from that source, the Government of the State may complain to the President.

Decision of complaints.

240. (1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the President upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purposes of assisting a Commission appointed under this article in investigating any matters referred to them, the Supreme Court, if requested by the Commission so to do, shall make such orders for the purposes of the proceedings of the Commission as they may make in the exercise of the jurisdiction of the court.

(5) The report of the Commission shall include a recommendation as to the Government or persons by whom the expenses of the Commission and any costs incurred by any State or persons in appearing before the Commission are to be paid and as to the amount of any expenses or costs to be so paid; and an order made by the President under this article, in so far as it relates to expenses or costs, may be enforced as if it were an order made by the Supreme Court.

(6) After considering any report made to him by the Commission the President shall, subject as hereinafter provided, make orders in accordance with the report,

(7) If upon consideration of the Commission's report the President is of opinion that anything therein contained involves a substantial question of law. he shall refer the question to the Supreme Court under article 119 of this Constitution and on receipt of the opinion of the Supreme Court thereon shall, unless the Supreme Court has agreed with the Commission's report, return the report to the Commission together with the opinion and the Commission shall thereupon make such modifications in the report as may be necessary to bring it in accord with such opinion and present the report as so modified to the President.

(8) Effect shall be given, in any State affected, to any order made under this article by the President, and any Act of the Legislature of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(9) The President, on application made to him by the Government of any State affected, may at any time, if a Commission appointed as aforesaid so recommend, vary any order made under this article.

Interference with water supplies of States in Part II of the First Schedule.

241. If it appears to the President that the interests of any State for the time being specified in Part II of the First Schedule, or of any of the inhabitants of such a State, in the water from any natural source of supply in any State for the time being specified in Part I or Part III of the First Schedule have been or are likely to be affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding article and

thereupon those provisions shall apply as if the State for the time being specified in Part II of the First Schedule were a State for the time being specified in Part I of that Schedule and as if a complaint with respect to the matter had been made by the Government of that State to the President.

Jurisdiction of courts excluded.

242. Notwithstanding anything in this Constitution, neither the Supreme Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter, if action in respect of that matter might have been taken under any of the three last preceding articles by the Government of a State or the President.

Inter-State Trade and Commerce

Prohibition of preference or discrimination to one State over another by any law or regulation relating to trade or commerce.

*243. No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air.

Restriction on trade, commerce and intercourse between States.

*244. Notwithstanding anything contained in article 16 or in the last preceding article of this Constitution, it shall be lawful for any State—

(a) to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests;

Provided that during a period of five years from the commencement of this Constitution the provisions

* The Committee is of opinion that the provisions contained in articles 243 and 244 should more appropriately be included in this Chapter than in Part HI dealing with Fundamental Rights.

of clause (b) of this article shall not apply to trade or commerce in any of the commodities mentioned in clause (a) of article 306 of this Constitution.

Appointment of authority to carry out the provisions of articles 243 and 244.

*245. Parliament shall by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary.

Co-ordination between States

Provisions with respect to an Inter-State Council

246. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure.

*The Committee is of opinion that it would be more appropriate to provide for the appointment of an authority by law for the purpose of carrying out the provisions of articles 243 and 244 instead of providing for an Inter-State Commission with limited powers as such a Commission, if appointed with powers only to adjudicate disputes as to trade or commerce, may not have sufficient work to do.

PART X

Finance, Property, Contracts and Suits

CHAPTER I—Finance

*DISTRIBUTION OF REVENUES BETWEEN THE UNION AND THE STATES

Interpretation

247. In this Part, unless the context otherwise requires,—

(a) "Finance Commission" means a Finance Commission constituted under article 260 of this Constitution;

(b) "State" does not include a State for the time being specified in Part II of the First Schedule;

(c) references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule.

Meaning of "revenues of India" and "revenues of the State. "

248. Subject to the following provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, the expression 'revenues of India' includes all revenues and public moneys raised or received by the Government of India and the expression 'revenues of the State' includes all revenues and public moneys raised or received by the Government of a State.

*The Committee has not embodied in the Draft the recommendations of the Expert Committee on the Financial Provisions of the Constitution with regard to the distribution of revenues between the Union and the States, as the Committee is of opinion that in view of the unstable conditions prevailing at the present moment the existing distribution of such revenues under the Government of India Act. 1935, should continue for at least five years, after which a Finance Commission may review the position. The Committee agrees with the Export Committee that steps should be taken for the collection, compilation and maintenance of statistical information referred to in paragraph 66 of the report of the Export Committee in order that such information might be available to the Finance Commission when appointed.

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Duties levied by the Union but collected and appropriated by the States.

249, (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(a) in the case where such duties are leviable within any State for the time being specified in Part II of the First Schedule, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable in that year within any State shall not form part of the revenues of India, but shall be assigned to that State.

Taxes levied and collected by the Union but assigned to the States.

250. (I) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2) of this article, namely:—

(a) duties in respect of succession to property other than agricultural land;

(b) estate duty in respect of property other than agricultural land;

(c) terminal taxes on goods or passengers carried by railway or air;

(d) taxes on railway fares and freights.

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule, shall not form part of the revenues of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

Taxed levied and collected by the Union and distributed between the Union and the States.

251. (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between, the Union and the States in the manner provided in clause (2) of this article.

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such

tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule or the saxes payable in respect of Union emoluments, shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2) of this article : in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to States for the time being specified in Part II of the First Schedule.

(4) In this article—

(a) "taxes on income" includes any sum levied by the Government of India in lieu of any tax on income as referred to in clause (a) of the proviso to article 266 of this Constitution but does not include a corporation tax;

(b) "prescribed" means—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

(c) "Union emoluments" includes all emoluments and pensions payable out of the revenues of India in respect of which income-tax is chargeable.

Surcharge on certain duties and taxes for purposes of the Union.

252. Notwithstanding anything contained in articles 250 and 251 of this Constitution, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the revenues of India.

Taxes which are levied and collected by the Union and may be distributed between the Union and the States.

*253. (1) No duties on salt shall be levied by the Union.

(2) Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the revenues of India to the States to which the law imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distributon as may be formulated by such law.

Distribution of duty on jute or jute products.

254. Notwithstanding anything in article 263 of this Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenues of India, but shall be assigned to the States in which jute is grown in accordance with such principles of distribution as may be formulated by such law:

Provided that until Parliament so determine, there shall be assigned to those States out of the net proceeds of the duty in each year such part thereof and in such proportions as may have been fixed in that behalf by any order made under the Government of India Act, 1935, and in force immediately before the commencement of this Constitution.

Grants from the Union to certain States,

255. Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the revenues of India as grants-in-aid of the revenues of a State for the time being specified in Part I of the

* The majority of the members of the Committee are of opinion that there should be no constitutional prohibition regarding the duty on salt and its levy should be left to the discretion of Parliament and accordingly clause (I) of this article is not necessary ; but Shri Alladi Krishnaswami Ayyar is of opinion that this clause should be retained.

First Schedule such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the scheduled tribes in that State or raising the level of administration of the scheduled areas in that State to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the revenues of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the sixth Schedule; and

(b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

Taxes on professions, trades, callings and employments.

256. (1) Notwithstanding anything in article 217 of this Constitution but subject to the provisions, of clauses (2) and (3) of this article, the Legislature of a State shall have power to make laws with respect to taxes on professions, trades, callings and employments for the benefit of the State or of a municipality, district board, local board or other local authority therein.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum:

Provided that, if in the financial year immediately preceding the commencement of this Constitution there was in force in any State or any such munici-

pality, board or authority, a tax on professions, trades, callings or employments, the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law. and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

Savings.

257. Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament.

Agreement with States specified in Part III of the First. Schedule with regard to the levy, collection and distribution of taxes and duties.

258. (1) Notwithstanding anything contained in this Chapter, the Union may, subject to the provisions of clause (2) of this article, enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.

(2) An agreement entered into under clause (1) of this article shall continue in force for a period not exceeding ten years from the commencement of this Constitution:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission he thinks it necessary to do so.

Calculation of "net proceed", etc.

259. (1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

Finance Commission.

260. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may, by law, determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid to the States out of the revenues of India;

(c) the continuance or modification of the terms of any agreement entered into by the Union with any State for the time being specified in Part III of the First Schedule as respects the levy, collection and distribution of any tax or duty leviable by the Government of India in such State; and

(d) any other matter referred to the Commission by the President in the interest of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

Recommendations of the Finance Commission.

261. The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum as to the action taken thereon to be laid before Parliament.

Miscellaneous Financial Provisions

Expenditure defrayable out of the revenues of India.

262. The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Provisions as to the custody of public moneys.

263. (1) Rules may be made by the President and by the Governor of a State for the purpose of securing that all moneys received on account of the revenues of India or of the State, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public accounts of India or of the State, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys thereform, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

(2) Notwithstanding anything in this article, Parliament may by law regulate the custody of moneys received on account of the revenues of India their payment into the public account of India and the withdrawal of moneys from such account, and the Legislature of a State may by law regulate the custody of all moneys received on account of the revenues of the State, their payment into the public account of the State and the withdrawal of moneys from such account, and any rules made under this article shall have effect subject to the provisions of any such law.

Exemption of certain public property from taxation.

264. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by or by any authority within a State:

Provided that until Parliament, by law, otherwise provides, any property of the Union which was immediately before the commencement of this Constitution liable or treated as liable to any such tax shall, so long as that tax continues, continue to be liable or to be treated as liable thereto.

Exemption from taxes on electricity.

265. Save in so far as Parliament may, by law, otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by Government or other person) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of a Union railway by the Government or a railway company operating that railway or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of a Union railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or

operation of a Union railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

Exemption of the Governments of States in respect of Union taxation

266. Subject as hereinafter provided, the Government of a State shall not be liable to Union taxation in respect of lands or buildings situate within the territory of India, or income accruing, arising or received within such territory:

Provided that—

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a State, nothing in this article shall exempt that Government from any Union tax or the levy of a sum in lieu of such tax in respect of that trade or business or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof;

(b) nothing in this article shall exempt the Ruler of any State for the time being specified in Part III of the First Schedule from any Union tax in respect of lands, buildings or income being his personal property or personal income.

Explanation.—For the purposes of this article, any operations incidental to the ordinary functions of the Government of a State, such as, the sale of the forest produce of any forest under the control of the Government of a State or of any article produced in any jail within a State, shall not be deemed to be a trade or business carried on by or on behalf of the Government of the State.

Adjustments in respect of certain expenses and pensions.

267. Where under the provisions of this Constitution the expenses of any court or Commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State for the time being specified in Part I of the First Schedule, then if—

(a) in the case of a charge on the revenues of India, the court or Commission serves any of the separate needs of a State so specified, or the person has served wholly or in part in connection with the affairs of such a State; or

(b) in the case of a charge on the revenues of a State so specified, the court or Commission serves any of the separate needs of the Union or another State so specified, or the person has served wholly or in part in connection with the affairs of the Union or another such State,

there shall be charged on and paid out of the revenues of the State or, as the case may be, the revenues of India or of the other State, such contribution in respect of expenses or pensions as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

CHAPTER II—Borrowing

Borrowing by the Government of India.

268. The executive power of the Union extends to borrowing upon the security of the revenues of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

Borrowing by States.

269. (1) Subject to the provisions of this article, the executive power of a State for the time being specified in Part I of the First Schedule extends to borrowing within the territory of India upon the security of the revenues of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions, if any, as it may think fit to impose, make loans to States for the time being specified in Part I

or Part III of the First Schedule or so long as any limits fixed under the last preceding article are not exceeded, give guarantees in respect of loans raised by any such State and any sums required for the purpose of making such loans shall be charged on the revenues of India.

(3) A State for the time being specified in Part I or Part III of the First Schedule may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or its predecessor Government or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

A consent under this clause may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

CHAPTER Ill—Property, Contracts, Liabilities and Suits

Succession to assets and debts, rights and liabilities

270. As from the commencement of this Constitution, the Government of India and the Government of each State for the time being specified in Part I of the First Schedule shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governors' Provinces as regards all property, assets and liabilities subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

Property accruing by escheat or lapse or as bona vacantia

271. Subject as hereinafter provided, any property in the territory of India except the States for the time being specified in Part III of the First Schedule which, if this Constitution had not come into operation, would have accrued to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State for the time being specified in Part I of the First Schedule, vest in such State for the purposes of

the Government of that State, and shall, in any other case, vest in the Union for the purposes of the Government of India:

Provided that any property which at the date when it would have so accrued to His Majesty was in the possession or under the control of the Government of India or the Government of a State for the time being specified in Part I of the First Schedule shall, according as the purposes for which it was then used or held were purposes of the Union or of a State so specified, vest in the Union for the purposes of the Government of India or in the State for the purposes of the Government of that State.

Power to acquire property

272. (1) The executive power of the Union and of each State for the time being specified in Part I of the First Schedule shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State for the time being specified in Part I of the First Schedule shall vest in the Union or any such State, as the case may be.

Contracts.

273. (1) All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President, nor the Governor of a State, shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing such contract or assurance on behalf of any of them be personally liable in respect thereof.

Suits and proceedings.

274. (1) The Government of India may sue or be sued by the name of the Government of India and the Government of a State for the time being specified in Part I of the First Schedule may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Government of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province is a Party, the corresponding State shall be deemed to be substituted for the Province in those proceedings.

PART XI
Emergency Provisions

Proclamation of Emergency.

275. (1) If the President is satisfied that a grave emergency exists whereby the security of India is threatened, whether by war or domestic violence, he may by proclamation, make a declaration to that effect.

(2) A proclamation issued under clause (1) of this article (in this Constitution referred to as "a Proclamation of Emergency")—

(a) may be revoked by a subsequent proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India is threatened by war or by domestic violence may be made before the actual occurrence of war or of any such violence if the President is satisfied that there is imminent danger thereof.

Effect of Proclamation of Emergency.

276. Where a Proclamation of Emergency is in operation, then, notwithstanding anything contained in this Constitution—

(a) the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter.

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Application of provisions relating to distribution of revenues during the period a Proclamation of Emergency is in operation.

277. The President may, while a Proclamation of Emergency is in operation, by order, direct that all or any of the provisions of articles 249 to 259 of this Constitution shall for such period, not extending in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

Provisions in case of failure of constitutional machinery in States in Part I of the First Schedule.

278. (1) If the President, on receipt of a proclamation issued by the Governor of a State under article 188 of this Constitution, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may by proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable only by Parliament;

and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in that State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of this Constitution relating to High Courts.

(2) Any such proclamation may be revoked or varied by a subsequent proclamation.

(3) A proclamation under this article—

(a) shall be laid before each House of Parliament;

(b) except where it is a proclamation revoking a previous proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this clause it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

(4) Where by a proclamation issued under clause (1) of this article it has been declared that the powers of the Legislature of the State shall be exercisable only by Parliament, it shall be competent—

(a) for Parliament to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Government of India or officers and authorities of the Government of India;

(b) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(5) Any law made by Parliament which Parliament would not but for the issue of a proclamation under this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the Legislature of the State.

Suspension of provisions during emergencies,

279. While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take.

Suspension of the rights guaranteed by article 25 of this Constitution during emergencies.

*280. Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.

* The Committee is of opinion that no provision should be made for suspension of the Fundamental Rights under article 13 or for suspension of the enforcement of such rights under article 25 where an emergency is declared by the Government of a State for the time being specified in Part III of the First Schedule as it will create unnecessary complications.

PART XII

Services under the Union and the States

CHAPTER I—*Services

Inter-pretation.

281. In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

Recruitment and conditions of service of persons serving the Union or a State.

282. (1) Subject to the provisions of clause (2) of this article, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to public services, and to posts in connection with the affairs, of the Union or any State.

(2) No person who is a member of any civil service or holds any civil post in connection with the affairs of the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(a) where a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

Transitional provisions.

283. Until other provision is made in this behalf tinder this Constitution, any rules which were in force immediately before the commencement of this

* The Committee is of opinion that detailed provisions with regard to recruitment and conditions of service of persons in Defence services or serving the Union or a State in a civil capacity should not be included in the Constitution but should be left to be regulated by Acts of the appropriate Legislature.

Constitution and were applicable to any public service or any post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

CHAPTER II—Public Service Commissions

Public Service Commissions for the Union and for the States.

284. (1) Subject to the provisions of this article there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree—

(a) that there shall be one Public Service Commission for that group of States; or

(b) that the Public Service Commission for one of the States shall serve the needs of all the States;

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of States, specify by what Governor or Governors the functions which are under this Part of this Constitution to be discharged by the Governor of a State are to be discharged.

(3) The Public Service Commission for the Union if requested so to do by the Governor of a State may, with the approval of the President, agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union, or, as the case may be, the State as respects the paricular matter in question.

Composition and staff of Commissions.

285. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission, by the President, and in the case of a State Commission, by the Governor of the State in his discretion:

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) In the case of the Union Commission, the President and, in the case of a State Commission, the Governor of the State in his discretion, may by regulations—

(a) determine the number of members of the Commission, their tenure of office and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service.

(3) On ceasing to hold office—

(a) the Chairman of the Union Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Commission shall be eligible for appointment as the Chairman or a member of the Union Commission or as the Chairman of another State Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) no other member of the Union or of any State Commission shall be eligible for any other appointment either under the Government of India or the Government of a State without the approval, in the case of an appointment in connection with the

affairs of a State, of the Governor of the State and, in the case of any other appointment, of the President.

Functions of Public Service Commissions.

286. (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted, but, subject to regulations so made and to the provisions of the next succeeding clause, the Union Commission or, as the case may be, the State Commission shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candid tes for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown, in a civil capacity that any costs incurred by him

in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of India or, as the case may be, the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor may refer to them.

(4) Nothing in this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Union or a State.

Power to extend functions of Public Service Commissions .

287. Subject to the provisions of this article, an Act made by Parliament or by the Legislature of the State may provide for the exercise of additional functions by the Union Public Service Commission, or, as the case may be, by the State Public Service Commission:

Provided that where the Act is made by the Legislature of a State, it shall be a term of such Act that the functions conferred by it shall not be exercisable in relation to any person who is not a member of one of the services of the State except with the consent of the President.

Expenses of Public Service Commissions.

288. The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of India or, as the case may be, the State.

PART XIII

Elections

Superintendence, direction and control of elections to be vested in an Election Commission.

289. (1) The superintendence, direction and control of all elections to Parliament and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament, shall be vested in a Commission to be appointed by the President.

(2) The superintendence, direction and control of all elections to the Legislature of a State for the time being specified in Part I of the First Schedule and of elections to the office of Governor of the State *elections to constitute a panel for the purpose of the appointment of a Governor of the State held under this Constitution including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to the Legislature of such State shall be vested in a Commission to be appointed by the Governor of the State.**

Elections to Parliament.

290. Subject to the provisions of this Constitution, Parliament may, from time to time, by law, make provision with respect to all matters relating to or in connection with elections to either House of Parliament including matters necessary for securing the due constitution of the two Houses of Parliament and the delimitation of constituencies.

Elections to the Legislatures of States.

291. Subject to the provisions of this Constitution, the Legislature of a State for the time being specified in Part I of the First Schedule may, from time to time, by law, make provision with respect to all matters relating to or in. connection with elections to the House or Houses of the Legislature of the State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies.

* The words "elections to constitute a panel for the purpose of the appointment of a Governor of the State" will have to be used in this clause in place of the words "elections to the office of Governor of the State" if the second alternative is adopted in article 131.

** The Committee is of opinion that the Election Commission to superintend., direct and control elections to the Legislature of a. State in Part I of the First Schedule should be appointed by the Governor of the State.

PART XIV

Special Provisions Relating to Minorities

Reservation of seats for minorities in the House of the People.

292. Seats shall be reserved in the House of the People for—

(a) the Muslim community and the Scheduled Castes;

(b) the scheduled tribes in every State for the time being specified in Part I of the first Schedule; and

(c) the Indian Christian community in the States of Madras and Bombay,

according to the scale prescribed in sub-clause (b) of clause (5) of article 67 of this Constitution.

Special provisions regarding the representation of the Anglo-Indian community in the House of the People.

293. Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People.

Reservation of seats for minorities in the Legislative Assemblies of the States.

294. (1) Seats shall be reserved for—

(a) the Muslim community, the Scheduled Castes and the scheduled tribes (except the scheduled tribes in the autonomous districts of Assam) in the Legislative Assembly of every State for the time being specified in Part I of the First Schedule; and

(b) the Indian Christian community in the Legislative Assemblies of the States of Madras and Bombay,

according to the scale prescribed in clause (3) of article 149 of this Constitution.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for any community in the Legislative Assembly of any State for the time being specified in Part I of the First Schedule shall bear, as nearly as may be, the same proportion

to the total number of seats in that Assembly as the population of the community in the State bears to the total population of the State.

Explanation.—All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause and so also all the scheduled tribes in a State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district.

(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district *[except from the constituency comprising the cantonment and municipality of Shillong].

Special provisions regarding the representation of the Anglo-Indian community in the Legislative Assemblies of the States.

295. Notwithstanding anything contained in article 149 of this Constitution, the Governor of a State may, if he is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of the State, nominate such number of members of the community to the Legislative Assembly as he considers appropriate.

Claims of minority communities to services and posts.

296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a

* The words within square brackets should be deleted if the words 'excluding the town of Shillong' is retained in item 1 of Part I of the table appended to paragraph 19 of the Sixth Schedule to the Constitution.

State for the time being specified in Fart I of the First Schedule.

Special provision for Anglo-Indian community in certain services.

297. (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

Special provision with respect to educational grants for the benefit of Anglo-Indian community.

298. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the time being specified in Part I of the First Schedule for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the 31st day of March 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years;

Provided that at the end of ten years from the commencement of this Constitution, such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this

article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

Special Officers for minorities for the Union and the States.

299. (1) There shall be a Special Officer for minorities for the Union who shall be appointed by the President, and a Special Officer for minorities for each State for the time being specified in Part I of the First Schedule who shall be appointed by the Governor of the State.

(2) It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before Parliament.

(3) It shall be the duty of the Special Officer for a State so specified to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the State and to report to the Governor of the State upon the working of the safeguards at such intervals as the Governor may direct and the Governor shall cause all such reports to be laid before the Legislature of the State.

Control of the Union over the administration of Scheduled areas and welfare of scheduled tribes in States in Part I of the First Schedule.

300. (1) The President may at any time and shall, on the expiration of ten years from the commencement of this Constitution, by order, appoint a Commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the States for the time being specified in Part I of the First Schedule.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to such a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the State.

Appointment of a Commission to Investigate the conditions of backward classes.

301. (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before Parliament.

PART XV

Miscellaneous

Protection of President and Governors,

302. (1) The President or the Governor of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 50 of this Constitution:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor of a State in any court during his term of office.

(3) No process for the arrest or imprisonment of the President or the Governor of a State shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President or the Governor of a State shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President or Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Interpretation etc.

303, (1) In this Constitution, unless the context otherwise requires, the following expressions have the

meanings hereby respectively assigned to them, that is to say—

(a) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

(b) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;

(c) "an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;

(d) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly;

(e) "Chief Justice" includes in relation to a High Court a Chief Judge;

(f) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:—

(i) that it is not chargeable in respect of agricultural income;

(ii) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals ;

(iii) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;

(g) "corresponding Province" or "corresponding State" means in cases of doubt such Province or State as may be determined

by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question;

(h) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;

(i) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act;

(j) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;

(k) "goods" includes all materials, commodities, and articles;

(l) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;

(m) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other Addition thereto, of subscriptions to a provident fund;

(n) "public notification" means a notification in the Gazette of India, or, as the case may be, the official Gazette of a State;

(o) "securities" includes stock;

(p) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;

(q) "tax on income" includes a tax in the nature of an excess profits tax;

(r) "railway" includes a tramway not wholly within a municipal area;

(s) "Union railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway;

(t) "Indian State railway" means a railway owned by a State for the time being specified in Fart III of the First Schedule and either operated by such State, or operated on behalf of such State otherwise than in accordance with a contract made with that State by or on behalf of the Government of India, or any company operating a Union railway;

(u) "minor railway" means a railway which is wholly situate in one State and does not form a continuous line of communication with a Union railway, whether of the same gauge or not;

(v) "Schedule" means a Schedule to this Constitution;

(w) "Scheduled Castes" means in relation to any State for the time being specified in Part I of the First Schedule such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be scheduled castes for the purposes of the Fifth and Sixth Schedules to the Government of India Act, 1935, in relation to the corresponding Province;

(x) "scheduled tribes" means the tribes or communities specified in Parts I to IX of the Eighth Schedule in relation to the States for the time being specified in Part I of the First Schedule to which those Parts respectively relate.

(2) Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution.

(3) Any reference in this Constitution to Acts or laws of, or made by, Parliament or Acts or laws of, or made by, the Legislature of a State for the time being specified in Fart I of the First Schedule shall be construed as including a reference to an Ordinance made by the President or, as the case may be, to an Ordinance made by a Governor.

PART XVI

Amendment of the Constitution

Procedure for amendment of the Constitution.

304 (1) An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

*(a) any of the Lists in the Seventh Schedule;

(b) the representation of States in Parliament; or

(c) the powers of the Supreme Court,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Part I of the First Schedule and the Legislatures of not less than one-third of the States for the time being specified in Part III of that Schedule.

**(2) Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the ***method of choosing a Governor or the number of Houses of the

*The Committee is of opinion that item (a) of the proviso to clause (1) of this article should contain reference to all the Lists in the Seventh Schedule.

**The Committee is also of opinion that provision should be included in this article for enabling the Legislature of a State in Part I of the First Schedule to initiate a Bill for the amendment of the provisions of this Constitution relating to the choosing of the Governor and the number of Houses of the Legislature in such State provided such Bill is passed by an absolute majority of the Legislature of such State and is thereafter ratified by Parliament by an absolute majority, and has added clause (2) to this article for the purpose.

*** The words "the method of choosing a Governor or" should be retained in this clause only if the second alternative in article 131 is not adopted.

Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or, where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or, where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Explanation.—Where a group of States is for the time being specified in Part III of the First Schedule, the entire group shall be deemed to be a single State for the purposes of the proviso to clause (1) of this article.

"Reservation of seats for minorities to remain inforce for only ten years unless continued in operation by amendment of the Constitution.

305. Notwithstanding anything contained in article 304 of this Constitution, the provisions of this Constitution relating to the reservation of seats for the Muslims, the Scheduled Castes, the scheduled tribes or the Indian Christians either in Parliament or in the Legislature of any State for the time being specified in Part I of the First Schedule shall not be amended during a period of ten years from the commencement of this Constitution and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution.

PART XVII

Temporary and Transitional Provisions

Temporary power to to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.

*306. Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely;—

(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica;

(b) relief and rehabilitation of displaced persons;

(c) offences against laws with respect to any of the matters mentioned in clauses (a) and (b) of this article, inquiries and statistics for the purposes of any of those matters, jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall to the extent of the incompetency cease to have effect on the expiration

* The Committee is of opinion that in view of the. present conditions regarding the production, supply and distribution of foodstuffs and certain other commodities and the special problem of the relief and rehabilitation of refugee, power should be provided for Parliament to make Jaws with respect to these matters for a period of five years, although normally these matters fall in the State List. Similar power was conferred for a limited period by the India (Central Government and Legislature) Act, 1946.

of the said period except as respects things done or omitted to be done before the expiration thereof.

Continuance in force of existing laws and their adaptation.

307. (1) Subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) The President may, by Order, provide that, as from such date as may be specified in the Order, any law in force in the territory of India or in any part of such territory shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications, whether by way of repeal or amendment, as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution and any such adaptation or modification shall not be questioned in any court of law,

Explanation I.—The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution has extra territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary Act in force beyond the date fixed for its expiration.

Judges of the Federal Court to become judges of the Supreme Court and proceedings pending in the Federal Court or before His Majesty in Counoil to be transferred to the Supreme Court.

308. (1) The judges of the Federal Court holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 104 of this Constitution in respect of the judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

*(3) On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court.

(4) Further provision may be made by Parliament by law to give effect to the provisions of this article.

*The Committee thinks that all appeals and other proceedings pending before His Majesty-in-Council shall be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty-in-Council at the time of the commencement of the Constitution and any difficulty is experienced with regard to their transfer to, or disposal by, the Supreme Court, the President may pass necessary orders under the "removal of difficulties" clause (article 313).

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Courts, authorities and officers to continue to function after the commencement of this Constitution subject to the provisions thereof.

309. All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India shall continue to exercise their respective functions subject to the provisions of this Constitution.

Provisions as to judges of High Courts.

310. The judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

Provisions as to provisional Legislature of the Union, President, etc.

311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under this Constitution, the Constituent Assembly of the Dominion of India shall itself exercise all the powers and perform all the duties conferred on Parliament and may in particular make law for securing the due constitution of the two Houses of Parliament and for providing for all matters relating to or connected with elections to either House of Parliament including the delimitation of constituencies and for such other ancillary and consequential matters as may be deemed necessary for the purpose of giving effect to the provisions of this Constitution.

Explanation:—For the purposes of this clause, the Constituent Assembly of the Dominion of India includes members chosen to till casual vacancies in that Assembly in accordance with rules made in that behalf by the Assembly, but shall not include any members representing any territory not included in the First Schedule.

(2) The Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall

continue to be the Speaker of such Assembly functioning under clause (1) of this article.

*(3) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office.

(4) All persons holding office as ministers for the Dominion of India immediately before the commencement of this Constitution shall after such commencement become members of the Council of ministers of the provisional President under this Constitution.

Provisions as to provisional Legislature, Governor, etc. in each State in Part I of the First Schedule.

312. (1) Until the House or Houses of the Legislature of each State for the time being specified in Part I of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

(2) Any person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of this Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article.

*Two members of the Committee, the Honourable Dr. B.R. Ambedkar and Shri Alladi Krishnaswami Ayyar, are of opinion that for clause (3) of article 311 , the following clause should be substituted :—

"(3) The President of the Constituent Assembly of India shall become the provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office".

(3) Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been elected/appointed* in accordance with the provisions of Chapter II of Part VI of this Constitution and has entered upon his office.

(4) All persons holding office as ministers in a Province immediately before the commencement of this Constitution shall after such commencement become members of the Council of ministers of the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule.

Power of the President remove difficulties.

313. (1) Subject to the Provisions of clause (1) of article 311 of this Constitution, the President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by Order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of variation, addition, or repeal, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament.

*If the second alternative is adopted in article 131, the word "appointed" will have to be used in this clause instead of the word "elected".

PART XVIII

Commencement and Repeals.

Commencemeat.

314. This Constitution shall come into force on ... .

Repeals.

315. The Indian Independence Act, 1947, and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946, and all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect.

blank

FIRST SCHEDULE

[Articles 1 and 4]

THE STATES AND THE TERRITORIES OP INDIA

*Part I

The territories known immediately before the commencement of this Constitution as the Governors' Provinces of—

1. Madras,
2. Bombay,
3. West Bengal,
4. The United Provinces,
5. Bihar,
6. East Punjab,
7. The Central Provinces and Berar,
8. Assam,
9. Orissa.

Part II

The territories known immediately before the commencement of this Constitution as the Chief Commissioners' Provinces of—

1. Delhi,
2. Ajmer-Merwara including Panth Piploda,
3. Coorg.

*The Committee has anxiously considered the question whether Andhra should be specifically mentioned as a separate State in this Schedule. There was recently a statement by the Government on this subject, in which it was said that Andhra could be included among the Provinces in the Constitution as was done in the case of Orissa and Sind under the Government of India Act, 1935. Accordingly the Committee was at one stage inclined to mention Andhra as a distinct State in the Schedule. On fuller consideration, however, the Committee feels that the bare mention of the State in the Schedule will not suffice to bring it into being from the commencement of the new Constitution. Preparatory steps will have to be taken immediately under the present Constitution in order that the new State, with all the machinery of government, may be in being from the commencement of the new Constitution. This was what was done in the case of Orissa and Sind under the Act of 1935: they were made into separate Provinces with effect from April 1, 1936, while the Act came into operation on April 1, 1937. The Committee therefore recommends that a Commission should be appointed to work out or inquire into all relevant matters not only as regards Andhra but also as regards other linguistic regions, with instructions to submit its report in time to enable any new States whose formation it may recommend to be created under section 290 of the Act of 1935 and to be mentioned in this Schedule before the Constitution is finally adopted.

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Part III

DIVISION A

The following Indian States—

1. Mysore,
2. Kashmir,
3. Gwalior,
4. Baroda,
5. Travancore,
6. Cochin,
7. Udaipur,
8. Jaipur.
9. Jodhpur,
10. Bikaner,
11. Alwar,
12. Kotah,
13. Indore,
14. Bhopal,
15. Rewa,
16. Kolhapur,
17. Patiala,
18. Mayurbhanj,
19. United State of Kathiawar.

DIVISION B*

All other Indian States which were within the Dominion of India immediately before the commencement of this Constitution.

Part IV

The Andaman and Nicobar Islands.

* It is not possible to enumerate each of the States because owing to mergers of various kinds many of the States may disappear in larger units. It will be necessary however to enumerate all the States by name before the Constitution is finally adopted.

SECOND SCHEDULE

[Articles 48 (3), 62 (6), 79, 104, 124 (2), 135 (3), 145 (5), 163 and 197]

Part I

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensem, that is to say:—

The President	...	5,500 rupees.
The Governor of a State	...	4,500 rupees.

2. There shall be also paid to the President and to the Governors the following allowances per mensem during their respective terms of offices to enable them to discharge conveniently and with dignity the duties of their respective offices, that is to say:—

The President	...	——rupees.
The Governor of a State	...	——rupees.

3. There shall be paid to the President and a Governor an allowance equal to the actual expenses respectively incurred by them in travelling with their families, if any, and their and their families' effects to take up the appointment of the President or Governor as the case may be.

4. The President and each Governor throughout their respective terms of office shall be entitled without payment of rent or hire to the use of the official residences and of the railway saloons, river craft, air craft and motor cars provided for their respective use and no charge shall fall on them personally in respect of the maintenance thereof.

5. While the Vice-President or any other person is discharging the functions of the, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emolument and allowance under paragraphs 1 and 2 of this Schedule as the President or the Governor whose functions he discharges or for whom he acts, as the case may be, and during the period he so discharges the functions or acts, the provisions of paragraph 4 of this Schedule shall apply to him, but the provisions of paragraph 3 thereof shall not apply to him.

Part II

PROVISIONS AS TO THE MINISTERS FOR THE UNION AND FOR THE STATES IN PART I OF THE FIRST SCHEDULE

6. There shall be paid to the Prime Minister and to each of the other Ministers for the Union such salaries and allowances as were payable respectively to the Prime Minister and to each of the other Ministers for the Dominion immediately before the commencement of this Constitution.

7. There shall be paid to the Ministers for any State for the time being specified in Part I of the First Schedule such salaries and allowances as were payable to such Ministers for the corresponding Province immediately before the commencement of this Constitution.

Part III

PROVISIONS AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE, AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE COUNCIL OF STATES AND THE SPEAKER AND THE DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLIES OF STATES IN PART I OF THE FIRST SCHEDULE AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE COUNCILS OF SUCH STATES

8. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947.

9. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly of a State for the time being specified in Part I of the First Schedule and to

the Chairman and the Deputy Chairman of the Legislative Council of such State such salaries and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and where the corresponding Province had no Legislative Council immediately before such commencement there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

Part IV

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS

10. There shall be paid to the judges of the Supreme Court and of each High Court within the territory of India except the States for the time being specified in Part III of the First Schedule in respect of time spent on actual service salary at the following rates per mensem, that is to say:—

Chief Justice of the Supreme Court .	5,000 rupees:
Any other judge of the Supreme Court .	4,500 rupees:
Chiei Justice of a High Court .	4,000 rupees:
Any other judge of a High Court .	3,500 rupees:

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State for the time being specified in Part I of the First Schedule or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

11. The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judge of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall receive such reasonable allowances to reimburse him for expenses Incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President in the case of the Chief

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Justice or any other judge of the Supreme Court, or the Governor of the State in the case of the Chief Justice or any other judge of such High Court, may from time to time prescribe.

12. (1) The rights in respect of leave of absence or pension of the Chief Justice or any other judge of the Supreme Court shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to any such judge of the Federal Court.

(2) The rights in respect of leave of absence or pension of the Chief Justice or any other judge of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall be governed or shall continue to be governed, as the case may be, by the same provisions which were applicable immediately before the commencement of this Constitution to any such judge of such High Court.

(3) For the purposes of this paragraph, a person who was serving as an ad hoc judge, acting judge or additional judge at the commencement of this Constitution shall be deemed to have been serving as a judge at that date if, but only if, his service as such ad hoc judge, acting judge or additional judge continued without interruption until his subsequent permanent appointment as a judge.

13. In this Part, unless the context otherwise requires,—

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "judge" includes an ad hoc judge, an acting judge and an additional judge;

(b) "actual service" includes—

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may be directed by the President or the Governor, as the case may be, or by the Commission appointed under Article 289 of this Constitution to discharge;

(ii) vacations, excluding any time during which the judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

Part V

PROVISIONS AS TO THE AUDITOR-GENERAL OF INDIA

14. There shall be paid to the Auditor-General of India a salary at the rate of four thousand rupees per mensem.

15. The rights in respect of leave of absence or pension of the Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

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THIRD SCHEDULE

[Articles 62 (4), 81, 103 (6), 144 (2), 165 and 195]

FORMS OF DECLARATIONS

I

Form of oath of office for a Minister for the Union:—

"I, A.B., do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or illwill."

II

Form of oath of secrecy for a Minister for the Union:—

"I, A.B., do solemnly affirm (or swear) that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister."

III

Form of declaration to be made by a member of Parliament:—

"I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People) do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

IV

Form of declaration to be made by the judges of the Supreme Court:—

"I, A.B., having been appointed Chief Justice (or a judge) of the Supreme Court of India do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

V

Form of oath of office for a Minister for a State for the time being specified in Part I of the First Schedule:—

"I, A.B., do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the State of———— and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or illwill."

VI

Form of oath of secrecy for a Minister for a State for the time being specified in Part I of the First Schedule:—

"I, A.B., do solemnly affirm (or swear) that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister of———— ————————except as may be required for the due discharge of my duties as such Minister or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion."

VII

Form of declaration to be made by a member of the Legislature of a State for the time being specified in Part I of the First Schedule:—

"I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

VIII

Form of declaration to be made by the judges of a High Court:—

"I, A. B., having been appointed Chief Justice (or a judge) of the High Court at (or of) ----- do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

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FOURTH SCHEDULE

[Article 144 (4)]

INSTRUCTIONS TO THE GOVERNORS OF STATES IN PART I OF THE FIRST SCHEDULE

1. In these instructions, unless the context otherwise requires, the term "Governor" shall include every person for the time being discharging the functions of the Governor according to the provisions of this Constitution.

2, In making appointments to his Council of ministers the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among the ministers.

3. In all matters within the scope of the executive power of the State, save in relation to functions which he is required by or under this Constitution to exercise in his discretion, the Governor shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers.

4. The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the State, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments.

FIFTH SCHEDULE

[Articles 189 (a) and 190 (1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

Part I

GENERAL

1. Executive power of a State in scheduled areas.—Subject to the provisions of this Schedule the executive power of a State for the time being specified in Part I of the First Schedule extends to the scheduled areas therein.

2. Report by the Governor to the Government of India regarding the administration of the scheduled areas.—The Governor of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make a report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Part II

PROVISIONS AS TO THE STATES OF MADRAS, BOMBAY. WEST BENGAL, BIHAR, THE CENTRAL PROVINCES AND BERAR, AND ORISSA

3. Application of Part II.—The provisions of this Part shall apply to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa.

4. Tribes Advisory Council.—(1) As soon as may be after the commencement of this Constitution, there shall be established in the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa, a Tribes Advisory Council consisting of not less than ten and more than twenty-five members, of whom, as nearly as may be, three-fourths shall be elected representatives of the scheduled tribes in the. Legislative Assembly of the State.

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(2) It shall be the duty of the Tribes Advisory Council generally to advise the Government of the State on all matters pertaining to the administration of the scheduled areas, if any, and the welfare of the scheduled tribes in the State.

(3) The Governor may make rules prescribing or regulating as the case may be—

(a) the number of members of the Council, the mode of their appointment and of the appointment of its Chairman and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general;

(c) its relations with officials and local bodies in the State; and

(d) all other incidental matters.

5. Law applicable to scheduled areas.—(1) The Governor may, if so advised by the Tribes Advisory Council for the State, by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may with the approval of the said Council specify in the notification:

Provided that where such Act relates to any of the following subjects, that is to say—

(a) marriage;

(b) inheritance of property;

(c) social customs of the tribes;

(d) land, other than lands which are reserved forest under the Indian Forest Act, 1927 or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;

(e) any matter relating to village administration including the establishment of village panchayats,

the Governor shall issue such direction when so advised by the Tribes Advisory Council,

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make Regulations for any scheduled area in the State with respect to any matter not provided for by any law for the time being in force in such area.

(3) The Governor may also make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with

death, transportation for life or imprisonment for five years or upwards or relating to disputes other than those arising out of any such laws as may be defined in such regulations, and may by such regulations empower the headmen or panchayats in any such area to try such cases.

(4) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution.

6. Alienation and allotment of lands to non-tribals in scheduled areas.—(1) It shall not be lawful for a member of the scheduled tribes to transfer any land in a scheduled area to any person who is not a member of the scheduled tribes;

(2) No land in a scheduled area vested in the State within which such area is situate shall be allotted to, or settled with, any person who is not a member of the scheduled tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State.

7. Regulation of money-lending in scheduled areas.—The Governor may, and if so advised by the Tribes Advisory Council for the State shall, by public notification direct that no person shall carry on business as a money-lender in a scheduled area in the State except under or in accordance with the conditions of a licence issued by an officer authorised in this behalf by the Government of the State and every such direction shall provide that a breach of it shall be an offence, and shall specify the penalty with which it shall be punishable.

8. Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to a scheduled area in a State which are to be credited to, or is to be met from, the revenues of the State shall be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 177 of this Constitution.

9. Application of Part II to areas other than Scheduled areas.—(1) The Governor may, at any time by public notification, direct that all or any of the provisions of this Part

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shall on and from such date as may be specified in the notification apply in relation to any area in the State inhabited by members of any scheduled tribe other than a scheduled area as they apply in relation to a scheduled area in the State, and the publication of such notification shall be conclusive evidence that such provisions have been duly applied in relation to such other area.

(2) The Governor may by a like notification direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification cease to apply in relation to any area in the State in respect of which a notification may have been issued under sub-paragraph (1) of this paragraph.

Part III

PROVISIONS AS TO THE STATE OF THE UNITED PROVINCES

10. Application of Part III.—The provisions of this Part shall apply only to the State of the United Provinces.

11. Scheduled Areas Advisory Committee.—(1) As soon as may be after the commencement of this Constitution the Governor shall by order appoint for the State a Scheduled Areas Advisory Committee, two-thirds of the members of which shall be the members of the Scheduled tribes. Such order may define the composition, powers and procedure of the Committee and may contain such incidental or ancillary provisions as the Governor may consider necessary or desirable.

(2) It shall be the duty of the Scheduled Areas Advisory Committee generally to advise the Government of the State on all matters pertaining to the development of scheduled areas in the State.

12. Power of Governor to make regulations in certain cases.—(1) The Governor may make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or for the trial of such classes of suits or cases of small pecuniary value as may be specified in such regulations, and may also by such regulations empower the headmen or panchayats in any such area to try such cases or suits.

(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the scheduled tribes to any person who is not a member of the scheduled tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution.

13. Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the Annual Financial Statement.—The estimated receipts and expenditure pertaining to the scheduled areas in the State which are to be credited to, or is to be met from, the revenues of the State shall be shown separately in the Annual Financial Statement of the State to be laid before the Legislature of the State under Article 177 of this Constitution.

Part IV

PROVISIONS AS TO THE STATE OF EAST PUNJAB

14. Application of Part IV.—The provisions of this Part shall apply only to the State of East Punjab.

15. Appointment of Scheduled Areas Advisory Committee.—(1) As soon as may be after the commencement of this Constitution the Governor shall by order appoint for the State a Scheduled Areas Advisory Committee, two-thirds of the members of which shall be the residents of the scheduled areas in the State. Such order may define the composition, powers and procedure of the Committee and may contain such incidental or ancillary provisions as the Governor may consider necessary or desirable.

(2) It shall be the duty of the Scheduled Areas Advisory Committee generally to advise the Government of the State on all matters pertaining to the administration of the scheduled areas in the State.

16. Application of Acts of Parliament or of the Legislature of the Slate to scheduled areas.—The Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

17. Power of Governor to make regulations.—(1) The Governor may make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards, or for the trial of such classes of suits or cases of small pecuniary value as may be specified in such regulations, and may also by such regulations empower the headmen or panchayats in any such area to try such cases or suits.

(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the scheduled tribes to any person who is not a member of the scheduled tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution.

Part V

SCHEDULED AREAS

***18.** Scheduled areas.—(1) The areas specified in Parts I to VII of the Table below shall be the scheduled areas within the meaning of this Constitution, and any reference in the said Table to any division, district, administrative area, tahsil or estate shall be construed as a reference to that division, district, area, tahsil or estate as existing on the date of commencement of this Constitution.

(2) The President may at any time by Order—

(a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such an area;

(b) alter, but only by way of rectification of boundaries, any scheduled area;

*The Committee is of opinion that a provision on the lines of section 91(2) of the Government of India Act, 1935, as originally enacted, should be included in this paragraph to enable any area to be excluded from or included in the scheduled areas and the Committee has accordingly added sub-paragraph (2) to this paragraph.

(c) on any alteration of the boundaries of a State for the time being specified in Part I of the First Schedule or on the inclusion in Part I of that Schedule of a new State admitted into the Union or established by Parliament by law, declare any territory not previously included in any State so specified to be, or to form part of, a scheduled area,

and any such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper.

TABLE

I—MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

II—BOMBAY

In the West Khandesh District:—The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwassi Chiefs: (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur,

In the East Khandesh District:—The Satpura Hills reserved forest areas.

In the Nasik District:—The Kalvan Taluk and Peint Petha.

In the Thana District:—The Dahanu and Shahapur Talukas and Mokhada and Umbergaon Pethas.

III.—THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District. The portion of the Mirzapur District south of the Kaimur range.

IV.—EAST PUNJAB

Spiti and Lahaul in the Kangra District.

V.—BIHAR

The Ranchi and Singhbhum Districts, and the Latehar sub-division of the Palamau District of the Chota Nagpur Division.

The Santal Parganas District excluding the Godda and Deogarh Sub-divisions.

VI.—THE CENTRAL PROVINCES AND BERAR

In the Chanda district, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapapra Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Ghauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District,

VII—ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

SIXTH SCHEDULE

[Articles 189 (b) and 190 (2)]

PROVISIONS AS TO THE ADMINISTRATION OF THE TRIBAL AREAS IN ASSAM

1. Autonomous districts and autonomous regions.—(1) The tribal areas in each item of Part I of the Table appended to paragraph 19 of this Schedule for the time being included in that Part shall be an autonomous district.

(2) If there are different scheduled tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification—

(a) include any area in Part I of the said Table,

(b) create a new autonomous district,

(c) increase the area of any autonomous district,

(d) exclude any area from Part I of the said Table,

(e) diminish the area of any autonomous district:

Provided that no order shall be made by the Governor under clause (b) or clause (c) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule:

Provided further that no order shall be made by the Governor under clause (d) or clause (e) of this sub-paragraph unless a resolution to that effect is passed by the District Council of the autonomous district concerned.

2, Constitution of District Councils and Regional Councils.—(1) There shall be a District Council for each autonomous district consisting of not less than twenty and not more than forty members of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) The territorial constituencies for elections to each District Council shall be so delimited that as far as possible the areas inhabited by the different scheduled tribes of the district and the areas, if any, inhabited by other persons shall form separate constituencies:

Provided that no constituency shall be formed which has a total population of less than five hundred.

(3) There shall be a separate regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

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(4) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of District)" and "the Regional Council of (name of Region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(5) Subject to the provisions of this Schedule the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous Region shall be vested in the Regional Council for such region.

(6) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(7) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned and such rules shall provide for—

(a) the composition of the District Councils and Regional Councils and the allocation of seats therein;

(b) the delimitation of territorial constituencies for the purpose of elections to those Councils;

(c) the qualifications for voting at such elections and the preparation of electoral rolls;

(d) the qualifications for being elected at such elections as members of such Councils;

(e) any other matter relating to or connected with elections or nominations to such Councils;

(i) the procedure and the conduct of business in the District and Regional Councils;

(g) the appointment of officers and staff of the District and Regional Councils.

(8) The District or the Regional Council may after its first constitution make rules with regard to the matters specified in sub-paragraph (7) of this paragraph and may also make rules regulating—

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (7) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council:

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the Mikir and North Cachar Hills shall be the Chairman ex-officio of the District Council in respect of the territories included in items 5 and 6 respectively of Part I of the Table appended to paragraph 19 of this Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor, to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

3. Powers of the District Councils and Regional Councils to make laws.—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart of land other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land whether occupied or unoccupied for public purposes by the State of Assam in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

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(d) the regulation of the practice of jhum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

(i) marriage;

(j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1899, or under any other law for the time being in force in the area in question.

4. Administration of justice in autonomous districts and autonomous regions.—

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village Councils or courts for the trial of suits and cases other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply or those arising out of any law made under paragraph 3 of this Schedule, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village Councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of ail suits and cases between the parties all of whom belong to scheduled tribes within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other Court

in the State shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final.

5. Conferment of powers under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898 on the Regional and District Councils and on certain courts and officers for the trial of certain suits and offences.—(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in this behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such region or district, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in this behalf by the Governor, such powers under the Code of Civil Procedure, 1908 or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph the Code of Civil Procedure, 1908 and the Code of Criminal Procedure 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region.

6. Powers of the District Council to establish primary schools, etc.—The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and in particular may prescribe the language and the manner in which primary education shall be imparted in the primary schools *in* the district.

7. District and Regional Funds.—(1) There shall be constitued for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

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(2) Subject to the approval of the Governor rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be, the Regional Fund; and the rules so made may prescribe the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

8. Powers to assess and collect land revenue and to impose taxes.—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of Assam in assessing lands for the purpose of land revenue in the State of Assam generally,

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on land and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

(a) tax on professions, trades, callings and employments:

(b) a tax on animals, vehicles and boats;

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph.

9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.—(1) No licence or lease shall be granted by the Government of Assam for the purpose of prospecting

for, or the extraction of, minerals in any area comprised with in an autonomous district, save in consultation with the District Council for that district.

(2) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of Assam in respect of any area within an autonomous district as may be agreed upon between the Government of Assam and the District Council of such district shall be made over to that District Council.

(3) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (2) of this paragraph to the District Council and the decision of the Governor shall be final.

10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than scheduled tribes resident in the district.

(2) Such regulations may—

(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council;

(d) prescribe that no person who is not a member of the scheduled tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

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Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations,

11. Publication of laws, rules and regulations made under the Schedule.—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

12. Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions—Notwithstanding anything contained in this Constitution—

(a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be.

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the revenues of the State of Assam shall be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 177 of this Constitution.

14. Appointment of Commission to inquire into and report on the administration of autonomous districts.—(1) The Governor of Assam may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts in the State, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts in the State generally and in particular on—

(a) the provision of educational and medical facilities and communications in such districts;

(b) the need for any new or special legislation in respect of such districts; and

(c) the administration of the laws, regulations and rules made by the District and Regional Councils; and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam.

(3) In allocating the business of the Government of the State among his ministers the Governor of Assam may place one of his ministers specially in charge of the welfare of the autonomous districts in the State.

15. Annulment or suspension of acts and resolutions of the District or Regional Councils.—(1) If at any time the Governor is satisfied that an act or resolution of a Regional Council or a District Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

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(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

(3) The functions of the Governor under this paragraph shall be exercised by him in his discretion.

16. Dissolution of a District or Regional Council.—The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a Regional or a District Council and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the re-constitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of being heard by the Legislature of the State.

17. Application of the provisions of this Schedule to areas specified in Part II of the table appended to paragraph 19.—(1) The Governor of Assam may—

(a) subject to the previous approval of the President, by public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part II of the table appended to paragraph

19 of this Schedule or any portion of such area and thereupon such area or portion shall be administered in accordance with such provisions, and

(b) may also with like approval exclude any tribal area specified in Part II of the said table or any portion thereof from the said table.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part II of the said table or any portion of such area, the administration of such area or portion thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part VIII of this Constitution shall apply thereto as if such area or portion thereof were a territory specified in Part IV of the First Schedule.

18. Transitional provisions.—As soon as possible after the commencement of this Constitution the Governor of Assam shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and until a District Council is so constituted for an autonomous district the administration of such district shall be vested in the Governor in his discretion and the following provisions shall apply to the administration of the areas within such district instead of the provisions contained in this Schedule, namely:—

(a) no Act of Parliament or of the Legislature of the State shall apply to such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of such area and any regulations so made 'may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area. Regulations made under this clause shall be submitted forthwith to the President and until assented to by him shall have no effect;

(c) the Governor shall exercise his functions under clauses (a) and (b) of this paragraph in his discretion.

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19. Tribal areas.—The areas specified in Parts I and II of the table below shall be the tribal areas within the State of Assam, and any reference in the said table to any district or administrative area shall be construed as a reference to that district or area as existing on the date of commencement of this Constitution:

TABLE

Part I

1. The Khasi and Jaintia Hills District excluding the town of Shillong.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Sub division of Cachar District.
6. The Mikir Hills portion of Nowgong and Sibsagar Districts excepting the mouzas of Barpathar and Sarupathar.

Part II

1. The Sadiya and Balipara Frontier Tracts.
2. The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract)
3. The Naga Tribal Area.

SEVENTH SCHEDULE.

[Article 217.]

LIST I—Union List

*1. The defence of the territory of India and of every part thereof and generally all preparation for defence as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.

2. Central Intelligence Bureau.

3. Preventive detention in the territory of India **for reasons connected with defence, external affairs or the security of India.

***4. The raising, training, maintenance and control of the Naval, Military and Air Forces of the Union and their employment; the strength, organisation and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.

5. Industries declared by Parliament by law to be neces sary for the purpose of defence or for the prosecution of war.

6. Naval, Military and Air Force works.

7. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.

8. Arms, firearms, ammunition and explosives.

9. Atomic energy and mineral resources essential to its production.

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* The Committee has omitted the entry 'Requisitioning of lands for defence purposes including training and manoeuvres' as the matter will be covered by entry 43.

** The words 'reasons connected with defence, external affairs or the security of India have been substituted for the words 'reasons of State' in this entry to avoid conflict with entry 1 of the State List relating to preventive detention for reasons connected with the maintenance of public order.

*** This follows the entry as adopted by the Constituent Assembly, but the Chairman of the Drafting Committee strongly feels that the second part of the entry relating to armed forces in States in Part III of the first Schedule should be deleted in order to preclude such States from maintaining any armed forces of their own.

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10. Foreign Affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. War and Peace.

15. The entering into and implementing of treaties and agreements with foreign countries.

16. Foreign jurisdiction.

17. Trade and Commerce with foreign countries.

18. Foreign loans.

19. Citizenship, naturalisation and aliens.

20. Extradition.

21. Passports and visas.

22. Piracies, felonies and offences against the law of nations committed on the high seas and in the air.

23. Admission into, and emigration and expulsion from the territory of India,

24. Pilgrimages to places beyond India.

25. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

26. Import and export across customs frontiers as defined by the Government of India.

27. *Posts and telegraphs.

28. **Telephones, wireless, broadcasting and other like forms of communication.

29. Post Office Savings Bank.

30. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

* For restrictions on the power of Parliament to make laws with respect to 'Posts and telegraphs' in relation to States for the time being specified in Part III of the First Schedule, see article 224 (a).

**For restrictions on the power of Parliament to make laws with respect to 'Telephones, wireless, broadcasting and other like forms of communication' in relation to States for the time being specified in Part III of the First Schedule see article 224 (b).

31. National highways declared to be such by Parliament by law.

32. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods cm such waterways.

33. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

34. Admiralty jurisdiction.

35. Ports declared to be major ports by or under law made by Parliament or existing law including their delimitation and the constitution and powers of port authorities therein.

36. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

37. Carriage of passengers and goods by air or by sea.

38. Union railways; the regulation of all railways other than minor railways in respect of the safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

39. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

40. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

41. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Union Meteorological organisations.

42. Property of the Union and the revenue therefrom, but as regards property situated in a State subject always to legislation by the State, save in so far as Parliament by law otherwise provides.

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*43. Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union.

44. Reserve Bank of India.

45. Public debt of the Union.

46. Currency, foreign exchange, coinage and legal tender.

47. Banking.

48. Cheques, bills of exchange, promissory notes and other like instruments.

49. Insurance.

**50. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies, and of corporations, whether trading or not, with objects not confined to one State, but not including universities.

51. Patents, copyright, inventions, designs, trademarks and merchandise marks.

***52. Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken.

53. Extension of the jurisdiction of a High Court having its principal seat in any State within the territory of India except the States for the time being specified in Part III of the First Schedule to, and exclusion of the jurisdiction of any such High Court from, any area outside that State.

54. Jurisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List.

*The Committee is of opinion that the principle on which compensation is to be paid for the acquisition or the requisitioning of property should be the subject-matter of the Concurrent List and this entry has been revised accordingly and a new entry 35 has been inserted for the purpose in the Concurrent List.

** For restrictions on the power of Parliament to make laws with respect to 'Corporations' in relation to States for the time being specified in Tart III of the First Schedule, see article 224 (c).

*** The Committee is of opinion that the reference to 'Federal Judiciary' should be omitted from this entry as there should not be parallel Judiciaries in the Union. The Committee has, however, inserted a new article 219 providing power to Parliament to establish additional courts for the better administration of the laws made by Parliament and existing laws with respect to matters in the Union List on the lines of Section 101 of the British North America Act, 1867.

55. Census.

56. Inquiries, surveys, and statistics for the purposes of the Union.

57. Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

58. Union Public Services and Union Public Service Commission.

59. Industrial disputes concerning Union employees.

*60. Ancient and Historical Monuments declared by Parliament, by law to be of national importance; archaeological sites and remains.

61. Establishment of standards of weight and measure.

62. Opium, so far as regards cultivation and manufacture, or sale for export.

63. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable, so far as regards possession, storage and transport.

64. Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

65. Regulation of labour and safety in mines and oilfields.

66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a State for the time being specified in Part I or Part II of the First Schedule to any area in any other State so specified, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the government of the State; extension of the powers and jurisdiction of members of a force belonging to any State to railway areas outside that State.

68. Elections to Parliament and of the President and Deputy President; and Election Commission to superintend, direct and control such elections.

*The Committee is of opinion that Ancient and Historical Monuments declared by Parliament by law to be of national importance should be mentioned in this entry and not any and *every* Ancient and Historical Monument.

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69. The emoluments and allowances and rights in respect of leave of absence of the President, the salaries and allowances of the Ministers for the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of Parliament; the salary, allowances and the conditions of service of the Auditor-General of India.

70. The enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament.

71. Migration from one State to another.

72. Inter-State quarantine.

73. Inter-State trade and commerce subject to the provision of entry 33 of List II.

74. The devlopment of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

75. Fishing and fisheries beyond territorial waters.

76. Manufacture and distribution of salt by Union agencies; regulation and control of manufacture and distribution of salt by other agencies.

77. Provision for dealing with grave emergencies in any part of the territory of India affecting the Union.

78. Lotteries organised by the Government of India or the Government of any State.

*79. Stock Exchanges and futures market and taxes other than stamp duties on transactions therein.

80. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

81. Duties in respect of succession to property other than agricultural land.

82. Estate duty in respect of property other than agricultural land.

83. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

84. Taxes on income other than agricultural income.

85. Duties of customs including export duties.

*This entry has been inserted to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

*86. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

but including medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

87. Corporation tax.

88. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

89. Offences against laws with respect to any of the matters in this List.

90. Fees in respect of any of the matters in this List, but not including fees taken in any court.

91. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II—State List

1. Public order (but not including the use of naval, military or air forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. The administration of justice; constitution and organisation of all courts, except the Supreme Court, and fees taken therein.

3. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List; procedure in Rent and Revenue Courts.

4. Police, including railway and village police.

*The Committee is of opinion that duties of excise on medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry should be included in this entry as duties leviable by the Union, as it thinks that uniform rates of excise duty should be fixed in respect of these goods in all Statos for the sake of development of the pharmaceutical industry. The levy of different rates in different States is likely to lead to a discrimination in favour of goods imported from foreign countries which would be detrimental to the interests of Indian manufacturers as was pointed out by the Drugs Enquiry Committee in their report in 1931.

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5. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

6. Public debt of the State.

7. State Public Services and State Public Service Commissions.

8. Works, lands and buildings vested in or in the possession of the State.

*9. Compulsory acquisition of land except for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of a State.

10. Libraries, museums and other similar institutions controlled or financed by the State.

**11. Elections to the Legislature of the State and of the Governor of the State/for the constitution of a panel for the propose of the appointment of a Governor for the State; and Election Commission to superintend, direct and control such elections.

12. The emoluments and allowances and rights with respect to leave of absence of the Governor of the State, salaries and allowances of the Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries, allowances and privileges of the members of the Legislature of the State.

13. The enforcement of attendance of persons for giving evidence or producing documents before Committees of the Legislature of the State.

14. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

15. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

*See footnote to entry 43 of List I (Union List).

**The words 'for the constitution of a panel for the purpose of the appointment of a Governor for the State' will have to be used for the words 'of the Governor of the State' in this entry if the second alternative is adopted in article 131.

16. Pilgrimages, other than pilgrimages to places beyond India.

17. Burials and burial grounds; cremations and cremation grounds.

18. Education including Universities other than those specified in entry 40 of List I.

19. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions; of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

20. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 74 of List I.

21. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases

22. Improvement of stock and prevention of animal diseases; veterinary training and practice.

23. Pounds and the prevention of cattle trespass.

24. Land, that is to say, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

25. Courts of Wards, encumbered and attached estates.

26. Treasure trove.

27. Forests.

28. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

29. Fisheries.

30. Protection of wild birds and wild animals.

31. Gas and gasworks.

32. Trade and commerce within the State; markets and fairs.

33. Regulation of trade, commerce and intercourse with Other States for the purposes of the provisions of article 244 of this Constitution.

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31. Money lending and money lenders; relief of agricultural indebtedness.

35. Inns and inn-keepers.

36, Production, supply and distribution of goods.

37. Development of industries, subject to the provisions in List I with respect to the development of certain industries under the control of the Union,

38. Adulteration of foodstuffs and other goods.

39. Weights and measures except establishment of standards.

40. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

41. Relief of the poor; unemployment.

42. The incorporation, regulation, and winding up of corporations not being corporations specified in List I, or Universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies

43. Charities and charitable institutions, charitable and religious endowments and religious institutions.

44. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition

45. Betting and gambling.

46. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

47. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

48. Duties in respect of succession to agricultural land.

49. Estate duty in respect of agricultural land.

50. Taxes on passengers and goods carried on inland waterways.

51. Taxes on agricultural income.

52. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced

elsewhere in the territory of India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs;

*but not including medical and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

53. Taxes on lands and buildings.

54. Taxes on mineral rights, subject to any limitations imposed by Parliament by law relating to mineral development.

55. Capitation taxes.

56. Taxes on professions, trades, callings and employments.

57. Taxes on animals and boats.

**58. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the State of goods liable to taxes within the State on sale, turnover or purchase; taxes on advertisements.

59. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.

60. Taxes on the consumption or sale of electricity.

61. Taxes on the entry of goods into a local area for consumption, use or sale therein.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

63. Tolls.

64. Inquiries and statistics for the purpose of any of the matters in this last.

65. Offences against laws with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

List III—Concurrent List

1. Criminal Law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to

* See footnote to entry 86 of List I (Union List).

** This entry has been revised to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

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any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.

3. Removal of prisoners and accused persons from one State to another State.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution; the recovery in a State for the time being specified in Part I or Part II of the First Schedule of claims in respect of taxes and other public demands including arrears of land revenue and sums TPC verable as such, arising outside that State.

5, Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

*7. Wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency.

13. Administrators-general and official trustees.

14. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.

16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

* The Committee is of opinion that if there is to be a uniform personal law, e.g., for Hindus, throughout India, all the matters included therein at present should be put into the Concurrent List. Hence the enlargement of his entry.

17. Legal, medical and other professions.

18. Newspapers, books and printing presses.

19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

20. Poisons and dangerous drugs.

21. Mechanically propelled vehicles.

22. Boilers.

23. Prevention of cruelty to animals.

24. Vagrancy; nomadic and migratory tribes.

25. Factories.

26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade Union; industrial and labour disputes.

29. The prevention of the extension from one State to cmother of infectious or contagious diseases or pests affecting men, animals or plants.

30. Electricity.

31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to National waterways.

32. The sanctioning of cinematograph films for exhibition.

33. Persons subjected to preventive detention under the authority of the Union.

34. Economic and social planning.

*35. The principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union or a State.

36. Inquiries and statistics for the purpose of any of the matters in this List.

37. Fees in respect of any of the matters in this List, but not including fees taken in any court.

* See footnote to entry 43 of List I (Union last).

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EIGHTH SCHEDULE

[Article 303 (I) (x)]

SCHEDULED TRIBES

Part I

MADRAS

1.	Bagata		
2,	Bhottadas	—	Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3.	Bhumias	—	Bhuri Bhumia and Bodo Bhumia.
4.	Bissoy	—	Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoriya, Kollai, Konde, Paranga, Fenga Jodia, Sodo Jodia and Takora.
5.	Dhakkada		
6.	Dombs	—	Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telega and Ummia.
7.	Gadabas	—	Boda Gadaba, Cerllam Gadaba, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Fangi Gadaba and Paranga Gadaba.
8.	Ghaais.	—	Boda Ghasis and San Ghasls.
9.	Gondi.	—	Modya Gond and Rajo Gond.
10.	Goudus	—	Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11.	Kosalya Goudus Bosothoriya Goudus, Chitti	—	Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriya Goudus.
12.	Magatha Goudus Bernia Goudu, Boodo Magatha,	—	Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.
13.	Seerithi Goudus		
14.	Holva.		
15.	Jadapus.		
16.	Jatapus.		

17.	Kammaras.		
18.	Khattis-Khatti, Kommaro and Lohara.		
19.	Kodu.		
20.	Kommar.		
21.	Konda Dhoras.		
22.	Konda Kapus.		
23.	Kondareddia.		
24.	Kondhs	— Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.	
25.	Kotia .	— Bartika, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiya, Sanrona and Sidho Paiko.	
26.	Koya or Goud Raja of Rasha with its subsects,	— Koyas, (ordinary) and Kottu Koyas	
27	Madigas		
28.	Malas or Agency Malas or Valmikies		
29.	Malis.	— Korchia Malis, Paiko Malis and Pedda Malis.	
30.	Maune.		
31.	Manna Dhora.		
32.	Mukha Dhora.	— Nooka Dhora.	
33.	Muli or Muliya.		
34.	Muria.		
35.	Ojulus or Metta Komsalies.		
36.	Omanaito.		
37.	Paigarapu.		
38.	Palasi.		
39.	Palli.		
40.	Pentias.		
41.	Porjas .	— Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu, Pydi and Saliya,	
42.	Reddi Dhoras.		
43.	Relli or Sachandi.		
44.	Ronas.		
45.	Savaras.	— Kapu Savaras, Khutto Savaras and Maliya Savaras.	

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46. The residents of the Laccadive, Minicoy and Amindivi Islands.

Part II

BOMBAY

1. Barda.
2. Bavacha.
3. Bhil.
4. Chodhra.
5. Dhanka.
6. Dhodia.
7. Dubla.
8. Gamit, or Gamta.
9. Gond.
10. Kathodi, or Katkari.
11. Konkna
12. Koli Mahadeb.
13. Mavchi.
14. Naikda, or Nayak.
15. Pardhi, including Advichincher or Phanse Pardhl.
16. Patelia.
17. Pomla.
18. Powara.
19. Rathawa.
20. Tadvi Bhill.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

Part III

WEST BENGAL

1. Botia.
2. Chakma.

3. Kuki.
4. Lepcha.
5. Munda.
6. Magh.
7. Mro.
8. Oraon.
9. Santal.
10. Tippera.
11. Any other tribe notified by the Government of West Bengal.

Part IV
THE UNITED PROVINCES

1. Bhuinya.
2. Baiswar.
3. Baiga.
4. Gond.
5. Kharwar.
6. Kol.
7. Ojha.
8. Any other tribe notified by the Government of the United Provinces.

Part V
EAST PUNJAB

The Tibetans in Spiti and Lahaul in the Kangra District.

Part VI
BIHAR

I. A resident of the State of Bihar belonging to any of the following tribes:—

1. Asur.
2. Banjara.

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3. Bathudi.
4. Bentkar.
5. Binjhia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
12. Gond.
13. Gorait.
14. Ho.
15. Juang.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan.
22. Koli.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

II. A resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar

in the district of Manbhum, belonging to any of the following tribes:—

1. Bauri.
2. Bhogta.
3. Bhuiya.
4. Bhumij.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

III. A resident in the Dhanbad sub-division or in any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandankiari and Kashipur, belonging to the Bhumij tribe.

Part VII
THE CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Binjhwar.
9. Andh.
10. Bharia-Bhumia.
11. Koli.
12. Bhattra.
13. Baiga.
14. Kolam.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.

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21. Bhunjia.
22. Nagarchi.
23. Ojha.
24. Korku.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhul (or Birhor).
35. Rautia.
36. Pando.

Part VIII
ASSAM.

The following tribes and communities:—

1. Kachari.
2. Boro or Boro-Kachari.
3. Rabha.
4. Miri.
5. Lalung.
6. Mikir.
7. Garo.
8. Hajonfi.
9. Deori.
10. Abor.
11. Mishmi.
12. Dafla.
13. Singpho.
14. Khampti.
15. Any Naga or Kuki tribe.
16. Any other tribe or community notified by the Government of Assam.

Part IX
ORISSA.

I. A resident of the State of Orissa belonging to any of the following tribes:—

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khond (Kond).
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).
12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Binjhia.
18. Kisan.
19. Koli.
20. Kora.

II. A resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes:—

1. Dom or Dombo.
2. Pan or Pano.

III. A resident of the Sambalpur District belonging to any of the following tribes:—

1. Bauri.
2. Bhuiya
3. Bhumij.
4. Ghasi.
5. Turi.
6. Pan or Pano.

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APPENDIX

Separate notes submitted to the Constituent Assembly by Shri Alladi Krishnaswami Ayyar, Member, Drafting Committee

While I may point out that there is no difference in principle between my colleagues and myself either in regard to the distribution of legislative power between the Parliament and the Units or in regard to the Union Parliament assuming power over a subject in the Provincial (State) List when it assumes or becomes of national importance, I should like to submit the following separate note for the consideration of the Constituent Assembly in regard to the articles bearing on the above matters, i.e., Articles 217, 223(1) and 226.

Distribution of Legislative Powers. —Articles 217 and 223(1)

2. The question as to the distribution of legislative power has been decided by the Constituent Assembly and it is settled that the residuary power should vest in the Centre. The only question, therefore, is how to frame the articles so as to carry out this idea. My colleagues have decided to follow the scheme in Section 100 of the Government of India Act and to have a separate article for the residuary power as also to have it as an item in the list of subjects allotted to the Union. The point of my plan is that inasmuch as it is agreed that the residuary power is to vest in the Centre (Union Parliament), the various enumerated items in the Union list are merely illustrative of the general residuary power vested in the Centre. The proper plan, therefore, is to define the powers of the States or Provincial Units in the first instance, then deal with the concurrent power and lastly deal with the power of the Centre or the Union Parliament while at the same time making out a comprehensive list of the powers vested in the Centre by way of illustration to the general power. The plan adopted in Section 100 of the Government of India Act was to some extent accounted for by the fact that there was no agreement then among political parties as regards the location of residuary power and it was left for the Governor-General to decide by which Legislature the residuary power was to be exercised in any particular place in cases not covered by any of the Lists. There is no such problem facing us now. A canvassing of the meaning and import of individual items in the Central List has become of much less importance now than under the provisions of the Government of India Act.

The repetition of "notwithstanding" in every clause of Section 100 has been the subject of prolonged and unnecessary arguments in courts.

No complication is likely to arise by reason of the States in Part III coming into the scheme of the Union as according to the draft Constitution the scheme of distribution is subject to agreement between the States and that is provided for by articles 224 and 225.

Further, in the articles as framed there is no provision to the effect that the power of legislation carries with it the power to make any provisions essential to the effective exercise of the legislative authority. Some such provisions occur in the Australian and American Constitutions, *vide* Section 51 of the Australian Constitution and Article I, Section 8, Sub-section 18 of the American Constitution.

I would, therefore, suggest for the consideration of the Constituent Assembly the following article as a substitute for Articles 217 and 223(1) in the draft.

(1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling with the classes of subjects specified in List I (corresponding to Provincial Legislative List).

"(2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under Clause (1) have power to make laws for the State of any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof, and an Act of the legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.

"(3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.

"(4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.

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(b) Subject to the general powers of Parliament under Sub-section (a), the Legislature of the States in Part II, Schedule I, shall have the power to make laws in relation to matters coming within the following classes of subjects:

Provided, however, that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.

(This provision is necessary, if the recommendations of the *ad hoc* Committee on Chief Commissioners' Provinces in this regard are accepted.)

"(5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to ail matters essential to the effective exercise of the legislative authority; vested in the particular legislature.

"(6) Where a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be the existing law shall prevail and the law of the State shall to the extent to repugnancy be void."

(This follows the Australian and American provisions. Without embarking upon an examination of each section and each clause, a court may easily come to the conclusion that an Act taken as a whole is repugnant to another law).

If it is felt necessary, special provision may be inserted in regard to laws in respect of matters in the Concurrent List on the lines of Article 231(2) though I think such a provision may not be necessary in view of the overriding power of the Central Legislature.

Articles 226 and 228

3. I accept the principle underlying article 226 that if any subject in the Provincial List assumes national importance or becomes one of national interest in the language of the article, it ought to be possible for the Union to encroach (if one may use that expression) upon the Provincial field and take to itself the power to legislate on any subject in the Provincial List. But the very basis of the assumption of that power is that the subject can no longer be regarded as one merely of importance for the particular State but has assumed national dimensions.

If these premises be correct, there is no justification for a State to continue to retain the power. The object of the assumption of the power by the Union is not by some simple or easy method without having recourse to a change in the Constitution to convert what is Provincial or State power into a concurrent power. This principle is not kept in view in Article 228 which provides that the province will continue to have the legislative power in the particular subject. The conversion of what is a Provincial power into a concurrent power would offer a premium for interference by the Centre and may strike ultimately at the federal structure of the Constitution itself. I would, therefore, suggest the substitution of the following words :—

"on the ground that any matter enumerated in the State List has assumed national importance" for the words:

"or expedient in the national interest.....resolution" and add the words :

"that Parliament should make laws with respect to such matter";

before the words "it shall be lawful for the Parliament etc."

In article 228 for the words "Nothing in articles 226 and 227" substitute "Nothing in article 227".

ALLADI KRISHNASWAMI.

Article 218 is unnecessary, as it deals with the Supreme Court which is an item in List I.

Article 221 deals with a High Court. There is no point in specially providing for the jurisdiction as the jurisdiction of all Courts including the High Court is covered by items relating to the jurisdiction in the 3 Lists. As the articles dealing with the distribution of legislative power specially refer to the Lists, a separate article dealing with the Supreme High Court is superfluous and unnecessary.

ALLADI KRISHNASWAMI.

By Order,
H. V. R. IENGAR,
Secretary.

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Dr. AMBEDKAR being sworn-in as the First Law Minister of Free India by the President Dr. RAJENDRA PRASAD

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PART II

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SECTION FOUR

Clausewise Discussion

15th November 1948 to 8th January 1949

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Note

The discussion on the Articles of the Draft Constitution Commenced on 15th November 1948.

The amendments adopted by the House were those which Dr. Ambedkar had accepted. These amendments are incorporated here

Some of the amendments were not accepted by Dr. Ambedkar initially, but no detailed explanations were furnished. Some of these amendments are mentioned. But later, during the discussion on each Article, Dr. Ambedkar explained elaborately why he accepted particular amendments and why the others were not accepted. The amendments thus rejected were large enough. Their inclusion would have made the volume bulky and they are not for this reason included. The amendments adopted by the Assembly are given in detail. These accepted amendments along with Dr. Ambedkar's explanation, 'nay help the reader to understand the import of the Article.

This volume is mainly concerned with Dr. Ambedkar's work which incorporates everything he said in the Assembly and which finds place in the Debates. Comments and criticism by the Hon'ble Members are included where they are relevant to elucidate and appreciate the views of Dr. Ambedkar and which are related to the specific context and situation.—Editor.

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ARTICLE 1

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. Vice-President, Sir, I regret that I cannot accept the amendment of Prof. K. T. Shah.† My objections, stated briefly, are two. In the first place the Constitution, as I stated in my opening speech in support of the motion I made before the House, is merely a mechanism for the purpose of regulating the work of the various organs of the State. It is not a mechanism whereby particular members of particular parties are installed in office. What should be the policy of the State, how the Society should be organised in its social and economic side are matters which must be decided by the people themselves according to lime and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you stale in the Constitution that the social organisation of the State shall lake a particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live. It is perfectly possible today, for the majority people to hold that the Socialist organisation of society is better than the Capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves. This is one reason why the amendment should be opposed.

The second reason is that the amendment is purely superfluous. My Honourable Friend, Prof. Shah, does not seem to have taken into account the fact that apart from the Fundamental Rights, which we have embodied in the Constitution, we have also introduced other sections which deal with directive principles of State policy. If my Honourable friend were to read the Articles contained in Part IV, he will find that both the Legislature as well as the Executive have been placed by this Constitution under certain definite obligations as to the form of their policy. Now, to read only Article 31, which deals with this matter : It says ;

> "The State shall, in particular, direct its policy towards securing—
>
> (i) that the citizens, men and women equally, have the right to an adequate means of livelihood ;

*CAD. (Official Report). Vol. VIII, 15th November 1948, pp. 401-02.

†*Amendment of Prof. K. T. Shah is placed offer Dr. Ambedkar's speech.*

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;

(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(iv) that there is equal pay for equal work for both men and women :....."

There are some other items more or less in the same strain. What I would like to ask Professor Shah is this : If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be.

Therefore my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment.

* * * * *

[The amendment of Prof. K. T. Shah as under was put to vote.]

***Mr. Vice-President :** The question is :

"That in clause (1) of Article 1 after the words 'shall be a' the words 'Secular, Federal, Socialist' be inserted."

The motion was negatived.

Mr. Vice-President: I want to make one thing clear. After the reply has been given by Dr. Ambedkar, I shall not permit any further discussion. I have made a mistake once. I am not going to repeat it. (*Laughter*).

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I move :

"That in clause (1) of article 1, for the word 'States' the word 'provinces' be substituted."

You, Sir. will remember that when Dr. Ambedkar moved the motion for the consideration of this Draft Constitution, when he was dealing with the form of Government, he stated that.....

Mr. Vice-President : We do not want a discussion of this nature. I appeal to the Honourable Member to speak only if he has something new to say.

* * * * *

***Mahboob Ali Baig Sahib Bahadur :** If Dr. Ambedkar says that the word "Union" was used not with any great significance, there is no reason why we should not use the correct word "Federation", but if on the other hand the word "Union" was used with a purpose so that in course of time this federal form of government may be converted into a unitary form of government, then it is for this House now to

*CAD, Vol. VII, 15th November 1948, p. 403.

†CAD, (Official Report). Vol. VIII, 15th November 1948, p. 404.

use the correct word so that it may be difficult in future for any power-seeking party that may come into power easily to convert this into a unitary form of government. So, it is for the House to use the correct word "Federation" instead of the word "Union". This is my justification, Sir, for moving this amendment. If you mean that the government must be a federal government and not a unitary government and if you want to prevent in future any power-seeking party to convert it into a unitary form of government and become fascist and totalitarian, then it is up to us now to use the correct word, which is "Federation". Therefore, Sir, I move that the word "Federation" may be substituted for the word "Union".

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

The amendment was negatived.

* * * * *

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) : Sir, I move:

> "That in Article 1 for the word 'State' wherever it occurs, the word 'Pradesh' be substituted and consequential changes he made throughout the Draft Constitution."

* * * * *

†**The Honourable Dr. B. R. Ambedkar :** I oppose the amendment. Mr. Vice-President : The question is :

> "That in article 1 for the word "State" wherever it occurs, the word "Pradesh" he substituted and consequential changes be made throughout the Draft Constitution."

I think the Noes have it.

Shri H. V. Kamath : I ask a division.

Mr. Vice-President: It seems to me that the "Noes" have it. It is not necessary for me to call for a division. I have the power not to grant this request. I would request Honourable Members to consider the position. It seems to be quite obvious that the "Noes" have it.

The Honourable Shri Ghanshyam Singh Gupta : I accept the position that the "Noes" have it.

The Honourable Pandit Jawaharlal Nehru : May I suggest that instead of making our requests, we could raise our hands. That would give a fair indication how the matter stands.

Mr. Vice-President: Does the Honourable Shri G. S. Gupta admit that the "Noes" have it ?

The Honourable Shri Ghanshyam Singh Gupta : I accept the position that the "Noes" have it.

The amendment was negatived.

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*CAD, (Official Report). Vol. VII. 15th November 1948, p. 406.

†*Ibid.*, p. 412.

Shri H. V. Kamath : Sir, I beg to move :

"That in clause (1) of Article 1, for the word 'Slates' the word 'Provinces' he substituted."

(Discussion follows)

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, I do not accept the amendment.

(At this stage Shri Himmat Singh K. Maheshwari rose to speak.)

Mr. Vice-President : The Honourable Dr. Ambedkar has already replied to the debate and I am sorry I cannot allow any further debate on the motion.

Pandit Hirday Nath Kunzru (United Provinces : General) **:** Sir, it after every motion is moved by a member and you ask Dr. Ambedkar whether he agrees to it and after allowing him to express his views you debar other members from speaking on the subject, it will be very hard on the House.

Mr. Vice-President : I am afraid Pandit Hirday Nath Kunzru has not realised exactly my position. I am always prepared to give every possible facility to every member here, which I need not demonstrate further than by reference to what I have done in the last few days. But just now we are pressed for time. After Mr. Kamath moved his amendment I wailed for some time to see if anybody would stand up and nobody stood up and when specially I found that Mr. Kamath had repeated the arguments which had been formerly staled by him, I thought that I would not be going against the wishes of the House by asking Dr. Ambedkar the question whether he wished to reply. If I failed to understand the attitude of the House I am very sorry.

Pandit Hirday Nath Kunzru : You are perfectly within your right in not allowing discussion of a clause which you regard as trivial and on which you think there has been sufficient discussion. You have the power to stop discussion and ask the Member in charge to reply. If in exercise of this power you asked Dr. Ambedkar to reply, there can be no objection to what you have done.

Mr. Vice-President: Then I will put the amendment to vote.

The motion of Mr. Kamath was negatived.

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†Shri Mahavir Tyagi : Sir, I am not very keen to have all the words mentioned in my amendment inserted. I do not also want to make a

*CAD, (Official Report), Vol. VII. 15th November 1948, p. 413.

†*Ibid.,* p. 413.

speech and waste the time of the House. However, I want to make one point clear and with that end in view, I shall formally move this amendment :

"That in clause (1) of article 1. for the word 'States' the words 'Republican States and the sovereignty of the Union shall reside in the whole body of the people' he substituted."

* * * * *

***Mr. Vice-President:** I shall now put tills amendment to vote.

Shri Mahavir Tyagi : Mr. Vice-President, Sir, in view of what the learned draftsman has said, namely, that the sovereignty remains vested, in spite of this draft, in the people, I do not wish to press my amendment. I hope, Sir, Dr. Ambedkar agrees that this draft means that it vests with the people, and his explanation may well go down into the records for future reference.

The Honourable Dr. B. R. Ambedkar : Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble.

Shri Mahavir Tyagi : Then I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn..

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move :

"That in clause (1) of Article 1, after the word 'States' the words 'equal *inter se*' he added."

(Prof, shah explained the amendment and the discussion followed.)

†The Honourable Dr. B. R. Ambedkar : Sir, I oppose the amendment.

Mr. Vice-President : I put the amendment to vote.

The amendment was negatived.

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That at the end of clause (1) of Article 1. the following he inserted : 'and shall he known as the United States of India'. "

Sir, this is a non-controversial amendment.....

.....The other amendment is an alternative to this. I move:

"That at the end of clause (1) of Article I. the following he inserted :

'and shall be known as the Union of India'."

* * * * *

.....My other amendment is this. I move:

"That at the end of clause (1) of Article 1. the following he inserted :

'and shall he known as the Indian Union'."

*CAD. (Official Report), Vol. VII. 15th November 1948. p. 418.

†*Ibid.,* p. 421.

Sir, I submit these are three alternatives. I would prefer the first but it all depends on the House as to what it thinks about them.

[After Mr. Kamath's criticism on the Amendment, Dr. Ambedkar rose to reply,]

* * * * *

***The Honourable Dr. B. R. Ambedkar:** Sir, I oppose all these amendments. With regard to the first amendment that India should be known as the United States of India, the argument set out by my friend Mr. Kamath is a perfectly valid argument and I accept it wholeheartedly. I have given my own views as to why I used the word 'Union' and did not use the word 'Federation'.

With regard to the other amendment that India should be known as the Union of India, I also say that this is unnecessary, because we have all along meant that this country should be known as India, without giving any indication as to what are the relations of the component parts of the Indian Union in the very title of the name of the country. India has been known as India throughout history and throughout all these past years. As a member of the U.N.O. the name of the country is India and all agreements are signed as such and personally I think the name of the country should not in any sense give any indication as to what are the subordinate divisions it is composed of. I therefore oppose the amendments and maintain that the Draft as it is presented to the House is the best so far as these amendments are concerned.

Mr. Vice-President: I shall now put the amendments one by one to the vote.

Mr. Naziruddin Ahmad: Sir, I beg leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 113.

Mr. Naziruddin Ahmad : I am not moving 113.

But I am moving 114. Sir, I beg to move:

> "That in clause (2) of Article 1, the word 'The' occurring at the beginning be deleted."

* * * * *

†**The Honourable Dr. B. R. Ambedkar :** Sir, I raise a point of order. My point of order is that this is not an amendment. Unless it changes the substance of the original proposition, it is not an amendment. I am trying to find out the reference in May's Parliamentary Practice. But I would like to raise this point at this moment. If my

*CAD, (Official Report). Vol. VII, 15th November 1948. p. 422.

† *Ibid.,* pp. 422-24.

friend will forgive me, I think he is in the habit of moving all sorts of amendments, asking for a comma here, no commas there and so on and I think we must put a stop to this sort of thing in the very beginning.

Mr. Naziruddin Ahmad : On the very threshold of independence, if I am to be stopped like this, I shall bow down and submit to the decision of the Chair.

Mr. Vice-President: What is your reply to the point of order?

Mr. Naziruddin Ahmad : My reply to the point of order raised is this, I want to remove the word "The" from the article and therefore it is an amendment. This is certainly a drafting amendment. It may be opposed on the ground that it is insignificant, illogical or purposeless or useless and so forth. But Dr. Ambedkar is not right in asserting that it is not an amendment at all. It cannot be ruled out on the technical ground that it is not an amendment.

And with regard to my Honourable Friend's remarks as to my habit of moving amendments like punctuations and other changes, I am happy to inform him and the House that I have ceased to follow that habit so far as this amendment is concerned, (*Laughter*).

Mr. Vice-President: You say it is a drafting amendment. Can't we leave it to the Drafting Committee and its Chairman for seeing to it at the third reading ? I am sure they will accept these amendments if there is any substance in them.

Mr. Naziruddin Ahmad: In that case, it would be leaving the matter to the Drafting Committee, instead of leaving it to the judgment of the House. The spokesman of the Drafting Committee has already given out his mind. Therefore, if I were to agree to leave it to the Drafting Committee, it would be as good as withdrawing it. Therefore, I have to submit, again, that the word "The" is not part of the name.

Mr. Vice-President : I am waiting to hear Dr. Ambedkar on this point.

The Honourable Dr. H. R. Ambedkar : Sir, I do not know why the Honourable Member objects to the word 'the'. 'The' is a definite article, and it is quite necessary, because we are referring to the States in the Schedule. We are not referring to States in general, but to certain specific Stales which are mentioned in the Schedule. Therefore the definite article 'the' is necessary. It refers to the definite States included in the Schedule.

Secondly. I would like to submit this, that it would be wrong—and I speak about myself—for any Indian to presume such precise command aver the English language as to insist in a dogmatic manner that a

comma is necessary here, a semi-colon is necessary there, or article 'a' is proper here and article 'the' would be proper there and so on. But if my friend chooses to arrogate to himself the authority of a perfect grammarian so far as English is concerned, I would like to draw his attention to the Australian Constitution from which we have borrowed these words and the definite article 'the' is used there. So I take shelter or refuge under the Australian Constitution which, I suppose, we may take it, was drafted by men who were good draftsmen and who knew the English language and whom we cannot hold guilty of having committed an error in the language.

Mr. Vice-President : I put the amendment to vote.

The amendment was negatived.

Mr. Vice-President : Amenement No. 119, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in sub-clause (c) of clause (3) of Article 1, after the words 'as may' the word "hereafter" be inserted.

Sir, I have moved this amendment after, I believe, taking great risks of having to displease the Honourable Chairman of the Drafting Committee. But I have to submit most respectfully that things which occur to Members should be placed before the House and the opinion of the House should be taken. If 1 have offended any member by moving.....

Mr. Vice-President : There is no question to offending any one.

Mr. Naziruddin Ahmad : Sir, I beg to submit that the context indicates the word "hereafter" that is. States which may hereafter be acquired. So the word "hereafter" would be appropriate and I beg the House to consider insertion of this word.

The Honourable Dr. B. R. Ambedkar : I say it is quite unnecessary, and I oppose it.

Mr. Vice-President : I put the amendment to vole.

The amendment was negatived.

[The House was adjourned till 17th November 1948]

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***Mr. Vice-President :** (Dr. H. C. Mookherjee) : We shall now go on with the amendments. Amendment No. 126—Prof. Shah.

Prof. K. T. Shah (Bihar : General) **:** Mr. Vice-President, Sir, I beg to move :

"That at the end of sub-clause (c) of clause (3) of article 1. the following he added :

'or as may agree to join or accede to of merge with the Union'."

[This was followed by speech of Prof. Shah.]

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*CAD. (Official Report), Vol. VII, 17th November 1948. p. 425.

***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** Sir, I oppose the amendment.

The motion was negatived.

* * * * *

Prof. K. T. Shah : Mr. Vice-President, Sir, this amendment which stands in my name is as follows :

"That the following proviso be added to article 1 :

'Provided that within a period not exceeding ten years of the date when this Constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution and in the various articles that follow shall he abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se.* and functioning as democratic ' units within the Union'."

[This was followed by discussion.]

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†The Honourable Dr. B. R. Ambedkar : I oppose the amendment.

Mr. Vice-President : I will now put the amendment to vote.

[The amendment (of Prof. Shah) was negatived.]

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‡Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** Sir, I move :

"That at the beginning of the heading above article I, the word and Roman figure 'CHAPTER I', be inserted."

[This was followed by Mr. Ahmed's speech.]

#The Honourable Dr. B. R. Ambedkar : Sir, I oppose the amendment.

The motion was negatived.

$The Honourable Pandit Govind Vallabh Pant (United Provinces : General)**:** Sir, I move that we now pass on to Article 2 and postpone discussion on the remaining amendments to Article 1. So far we have not been able to reach unanimity on this important point. I am not without hope that if the discussion is postponed, it may be possible to find some solution that may be acceptable to all. So nothing will be lost....

[Mr. Pant's suggestion was supported by Mr. R. K, Sidhwa.]

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@The Honourable Dr. B. R. Ambedkar : I support the suggestion made by Pandit Govind Ballabh Pant.

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*CAD, (Official Report), Vol. VII, 15th November 1948, p. 426.

†*Ibid.,* p. 426.

‡*Ibid.,* p. 430.

#*Ibid*., p. 430.

$*Ibid*., p. 431.

@*Ibid.,* p.431.

Seth Govind Das (C.P. & Berar : General) **:** Sir, I wholeheartedly support Pandit Pant's proposition....

Shri H. V. Kamath : I only wanted to know for how long the amendments will be held over.

An Honourable Member : It may be a day, a week or a fortnight.

Mr. Vice-President : I hold that a discussion of these few clauses should be held over till sufficient time has been given for arriving at some sort of understanding. This will be to the best interests of the House and of the country at large.

* * * * *

ARTICLE 2 *

Mr. Naziruddin Ahmad : Sir I beg to move :

"That for article 2 and article 3. the following be substituted :

2. Parliament may by law—

(a) admit into the Union new States ;

(b) sub-divide any State to form two or more States :

(c) amalgamate any two or more of the following classes of territories to form a State, namely—

(i) Stales,

(ii) part or parts of any State.

(iii) newly acquired territory ;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this article ;

(e) alter the name of any State :

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained'.".

[This was followed by the speech of the mover.]

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†Mr. Naziruddin Ahmad : ...My next amendment which I shall move in this connection is as follows :—

"That in Article 2 the words 'from time to time' be delected."

[Mr. Ahmed explains his amendment]

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‡Shri M. Ananthasayanam Ayyangar : Sir, I oppose these amendments. These are verbal matters and I would even appeal to you

* CAD, (Official Report). Vol. VII, 15th November 1948, p. 431.

†*Ibid.,* 18th November 1948, p. 435.

‡*Ibid.,* 18th November 1948, p. 435.

not to allow such amendments. I request you to put it to vote now.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** I oppose the amendments.

Mr. Vice-President : I will put the amendments Nos. 131 and 132 to vole. Dr. Ambedkar has spoken already and there cannot he any further discussion.

The amendments were negatived..

* * * * *

Shri H. V. Kamath : Sir, I wish to speak on Article 2.

Mr. Vice-President Sir, it appears to me that lucre is a little lacuna in this Article which my Honourable friend, the able jurist and constitutional lawyer that he is, will rectify when it is finally dialled by the committee. If we turn to the report of the Union Constitution Committee.—I am reading from the report of (he Committee, second series, from July to August 1947. copy of which was supplied to each member last year—there Article 2 begins thus :—"The Parliament of the Federation" of course, we have changed the word Federation into Union but here you import the word 'Parliament' suddenly in Article 2 without saying to which Parliament it refers. This is a lacuna, because there is nothing so far in the previous article regarding Parliament. So we must say here the "Parliament of the Union." This lacuna, I hope. will be rectified.

The Honourable Dr. B. R. Ambedkar : We shall take note of what Mr. Kamath has said.

Article 2 was added to the Constitution.

* * * * *

ARTICLE 3

†The Honourable Shri K. Santhanam (Madras : General) **:** Sir, I move :

"That in clause (a) of article 3, the following words be added at the end:

'or by addition of other territories to States or parts of States'."

* * * * *

Shri M. Ananthasayanam Ayyangar : I request the House to accept the amendment because by this addition alone will the article become complete.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President. I am agreeable to the principle of the amendment moved by my friend Mr. Santhanam. The only point is that I like slightly to alter the language to read "or by uniting any territory to a part of any State".

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*CAD. (Official Report), Vol. VII. 18th November 1948. p. 435.

† *Ibid.,* p. 435.

The Honourable Shri K. Santhanam : I am agreeable to the change.

The motion was adopted.

* * * * *

***Rai Bahadur Syamanandan Sahaya** (Bihar ; General) : Sir, may I make a submission. I think that if Dr. Ambedkar moves his next amendment things will be clarified and such of us as have amendments in our names will be able to decide whether we should move them or not.

Mr. Vice-President : I agree with you fully. Dr. Ambedkar may move his amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for the existing proviso to article 3, the following proviso he substituted :

'Provided that no Bill for the purpose shall be introduced in either House of Parliament, except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained.'."

Mr. Vice-President, if one were to compare the amended proviso with the original proviso as it was set out in the Draft Constitution, the members will see that the new amendment introduces two changes. One is this : in original draft the power to introduce the Bill was given exclusively to the Government of India. No private Member of Parliament had the power, under the original draft, to propose any legislation of this sort. Attention of the Drafting Committee was drawn to the fact that this was a somewhat severe and unnecessary curtailment of the right of the members of Parliament to move any motion they liked and in which they felt concerned. Consequently we deleted this provision giving the power exclusively to the Government of India, and gave it to the President and stated that any such Bill whether it was brought by the Government of India or by any private Member should have the recommendation of the President. That is one change.

The second change is this : under the original Article 3, the power of the Government of India to introduce legislation was restricted by two conditions which are mentioned in (a) (i) and (ii). The conditions were that there must be, before the initiation of any action, representation

* CAD. (Official Report), Vol. VII, 17th November 1948. pp. 439-40.

made to the President by a majority of the representatives of the territory in the Legislature of the State, or a resolution in that behalf passed by the Legislature of any State whose boundaries or name will be affected by the proposal contained in the Bill. Here again, it was represented that there might be a small minority which felt very strongly that its position will not be safeguarded unless the boundary of the State were changed and that particular minority was permitted to join their brothers in the other State, and consequently if these brothers remained there, action would be completely paralysed. Consequently, we propose now in the amended draft, to delete (i) and (ii) of (a) and also (b) of the original draft. These have been split up into two parts, (a) and also (b). (a) deals with reorganisation of territory in so far as it affects the States in Part I, that is to say. Provinces and, (b) of the new amendment relates to what are now called Indian States. The main difference between the new sub-clauses (a) and (b) of my amendment is this : In the case of (a), that is to say, reorganisation of territories of States falling in Part I, all that is necessary is consultation. Consent is not required. All that the President is called upon to do is to be satisfied, before making the recommendation, that their wishes have been consulted.

With regard to (b), the provision is that there shall be consent. The distinction, as I said, is based upon the fact that, so far as we are at present concerned, the position of the Provinces is different from the position of the States. The States are sovereign States and the provinces are not sovereign States. Consequently, the Government need not be bound to require the consent of the provinces to change their boundaries ; while in the case of the Indian States, it is appropriate, in view of the fact that sovereignty remains with them that their consent should be obtained.

As regards the amendment moved by Prof. Shah, I do not see much difference between my amendment as contained in sub-clause (a) of the new proviso and his. He says that the discussion shall be initiated in the States. My sub-clause (a) of the proviso also provides that the States shall be consulted. I have not the least doubt about it that the method of consulting, which the President will adopt, will be to ask either the Prime Minister or the Governor to table a resolution which

may be discussed in the particular State legislature which may be affected, so that ultimately the initiation will be by the local legislature and not by the Parliament at all. I therefore submit that the amendment of Professor Shah is really unnecessary.

The Honourable Shri K. Santhanam : .....But, unfortunately, in his enthusiasm for what he calls the principle, he has tabled an amendment which altogether defeats his object. I therefore suggest that the amendment should be rejected and the proposition moved by Dr. Ambedkar should be accepted.

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Mr. Vice-President : Let us hear what Mr. Sidhwa has to say. We will certainly take up the amendments to which Mr. Kamath has drawn attention.

Shri R. K. Sidhwa : I do not accept the arguments advanced by Mr. Santhanam against the amendment moved by Professor Shah.....

.....Dr. Ambedkar's amendment is very clear and comprehensive..... I therefore commend the amendment of Dr. Ambedkar to the House.

[Amendment of Naziruddin Ahmed was not moved.]

***Mr. Vice-President :** Pandit Hirday Nath Kunzru.

Pandit Hirday nath Kunzru (United Provinces : General) : Mr. Vice-President, I beg to move:

> "that in the amendment of Dr. Ambedkar as just moved, for the words 'the previous consent' the words 'the views' and for the words 'has been' the words 'have been' be substituted respectively."

[This was followed by speech and discussion.]

†Shri Rohini Kumar Chaudhari (Assam : General) : Sir, it is my misfortune to have to oppose the amendments moved by the two stalwart members of this House, namely, Prof. Shah and Pandit Kunzru. I oppose them not because I like them less, but because I like Dr. Ambedkar's amendment more, as it meets the present situation very well.....

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†Shri R. K. Sidhwa (C. P. Berar : General) : ..... I would like Dr. Ambedkar to enlighten the House as to why this difference has been made between States and Provinces.....

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*CAD, (Official Report), Vol. VII, 17th November 1948, p. 441.

†*Ibid.,* p. 446.

‡*Ibid.* pp. 456-59.

With these observations, I support the amendment strongly and I hope Dr. Ambedkar will clear the point why a differentiation has been made in the case of the States, why he has stated that the views of the legislature should be ascertained in the case of the provinces, whereas in the case of the States he has stated that their previous consent should be obtained.

Mr. Vice-President : Dr. Ambedkar.

An Honourable Member : The question be now put, Sir.

Maulana Hasrat Mohani : (United Provinces : Muslim) : Sir, I rise to a point of order. Dr. Ambedkar has only moved an amendment and therefore, I submit, he has not got any right of reply. I have got a ruling of this House in which it is said definitely.....

Shri R. K. Sidhwa : I understand the whole article is under discussion. If the article is under discussion, Dr. Ambedkar has a right of reply.

Maulana Hasrat Mohani : Dr. Ambedkar has already spoken ; he has no right to make any further speech.

Mr. Vice-President : Please address the Chair.

Maulana Hasrat Mohani : Sir, I beg to point out, that the Ruling says—I am quoting from the printed proceedings of this House—the mover of an amendment has no right of reply. He cannot make a second speech.

Mr. Vice-President: I hold that the Article as well as the amendment are under discussion. Dr. Ambedkar.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) **:** Sir, the mover has a right of reply.

Mr. Vice-President : That makes my position stronger.

The Honourable Shri Ghanshyam Singh Gupta : What I mean to say, Sir ..... I submit that every mover of an amendment has got a right of reply.

Mr. Vice-President: You do not object to Dr. Ambedkar replying ?

The Honourable Shri Ghanshyam Singh Gupta : Not only do I not object, but I want to establish this practice that the mover of an amendment has a right of reply, because our rules differ widely from the rules that have been framed for the legislative side.

Mr. Vice-President: We shall decide that later on alter Dr. Ambedkar has made his reply.

Shri Lakshminarayan Sahu (Orissa : General) **:** Sir, there is an amendment in my name.

Mr. Vice-President: Kindly take your seat, Mr. Sahu. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** The amendment moved by my friend Mr. Kunzru is an amendment which carries a great deal of my sympathy but unfortunately in the circumstances in which we stand. I am not in a position to accept the same. The arguments urged by my friend in supporting his amendment was that what I had stated originally in moving my amendment was inconsistent with some of the other clauses or articles contained in the Constitution. He said that the plea I had urged in justification of the distinction between the provinces and the States in the matter of the provisions contained in article 3 was inconsistent with Articles 226, 230 and 294. Now my submission is this that there is no inconsistency whatever in the plea I have urged in supporting a distinction between the provinces and the States and the various articles to which he has made reference.

With regard to Article 226 which gives power to the Central Legislature to pass legislation on matters included in Provincial list, my submission is this that that authority will be exercised by Parliament by virtue of a Resolution passed by two-third majority of the Upper Legislature. He will realize that the Upper House or Council of States will include representatives of the States as much as the representatives of the Provinces. They will undoubtedly participate in the proceedings of that particular Resolution which seeks to confer power upon Parliament to legislate on the matters included in that Resolution. Consequently it is hardly fair to say that Article 226 automatically usurps the sovereignty of the Indian States. It is really a measure which confers sovereignty by a special resolution passed by the Upper Chamber in which the States are fully represented. That is therefore no illustration of inconsistency at all.

With regard to Article 230, my submission is also the same. My learned friend will remember that the Indian States apart from what they do after the Constitution is passed have at any rate for the present, acceded on the basis of three subjects and one of the subjects is Foreign Affairs. Obviously implementation of the treaty is nothing but an exercise of the power conferred upon the Central Parliament for implementation of the treaty which is the subject matter covered by Foreign Affairs. Therefore that again cannot be said to be an usurpation of their sovereignty rights.

With regard to 294 which deals with the extension of the provisions of the protection of minorities in Indian States, that undoubtedly may appear for the moment to be a sort of encroachement of their sovereignty but it is nothing of the kind. It is merely one of the proposals which we shall be making to the Indian States that when they seek admission to the Indian Union they will have to accept Article 294. I might say that this extension was made by the Drafting Committee because the Drafting Committee heard that the Constituent Assemblies of some of the Indian States were making provisions in this regard so diverse and so alarming that the Drafting Committee thought it best to lay down what sort of arrangements for minority protection the Union Government will accept and what it will not accept.

Now, Sir, with regard to this question of differentiation between the Indian States and the Provinces of British India a great lot has been said, and I quite realise that the House is terribly excited over the distinction that the Constitution seeks to make but I should like to tell the house two things. One is this that we are at the present moment bound by the terms of agreement arrived at between the two Negotiating Committees, one appointed by the Indian Constituent Assembly representing the British provinces and the other of representatives nominated by the Indian States for the purpose of arriving at certain basis for drafting a common Constitution which would cover both parts. Now I do not wish to go into the details of the reports made by the Negotiating Committees but if my Honourable Friend Pandit Kunzru would refresh his mind by going over the report of that Committee, he will find that here is a distinct provision that nothing in the Negotiating Committee Report will be understood to permit the Indian Union to encroach upon the territories of the Indian States. My submission is, if that is an understanding—I do not mean to say a contract or agreement—arrived at between the two parties, at this stage we would do well in respecting that understanding. I would like to point out another tiling,—another article in the Constitution to which I am sorry to say my Friend Mr. Kunzru has made no reference—that is Article 212 which is a very important article and I should like to explain what exactly are the possibilities provided by the Indian Draft Constitution with regard to the Indian States. Honourable members must have seen that Article 3 provides for the admission of the Indian States

on the basis of such Instrument of Accession as may be executed by the Indian States in favour of the Indian Union. When a State as such is coming into the Indian Union, its position *vis-a-vis* the Central Government and *vis-a-vis* the provinces would and must be regulated by the terms contained in the Instrument of Accession but the Instrument of Accession is not the only method of bringing the Indian States into the Indian Constitution. There is another and a very important article in the Constitution which is 212. 212 provides that any Ruler of an Indian State may transfer the whole of his sovereignty to the Indian Union with respect to his particular State. When the whole of the sovereignty is transferred under the provisions of 212, the territory of that particular ruler becomes so to say the territory of India, with complete sovereignty vested in the Indian Union. Power is then given under Article 212 so that that particular territory the sovereignty over which has been fully transferred by the ruler to the Indian Union can then be governed as a province of India in which case Part II of the Constitution which defines the Constitution of the Indian provinces will automatically apply to that Indian State or it may be administered as a Centrally Administered area ; so that the President and the Central Parliament will have the fullest authority to devise any form of administration for that particular territory. Consequently my submission to the House is that there is no necessity—if I may use an expression—to be hysterical over this subject. If we have a little patience I have not the least doubt about it that our minister for the Indian States, who has done so much to reduce the chaos that existed before we started *on* the making of our Constitution, will exercise the *de facto* of paramountcy which the Union Government has obtained and reduce the chaos further and bring about an order either by inducing the Indian States to accept the same provisions which we have applied to Indian States or to follow the provisions of section 212 and surrender to us complete sovereignty so that the Indian Union may be able to deal with the Indian States in the same way in which it is able to deal with the provinces.

For the present I submit we shall be acting wisely by respecting the agreement which has been arrived at by the two Negotiating Committees and following it up until by further agreement we are in a position to change the basis rather with goodwill peace and honour to both sides. Sir, I oppose the amendment (*Cheers*).

Mr. Vice-President : I shall now put Amendment No. 150, as modified by the amendment of Pandit H. N. Kunzru to vote. (*Interruptions*). Kindly permit me to conduct the proceedings in the manner I wish it to be conducted.

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***Mr. Vice-President**: I am going to give my ruling. Under the Rules of the House I am not aware that there is anything which gives a right to the mover of an amendment to give a reply. If I asked Dr. Ambedkar to give a reply it was because he was asked certain questions and I thought it right and proper and fair that he should be given an opportunity of explaining his position. That is my ruling.

Now I shall put Pandit Kunzru's amendment to the vote.

[The motion was negatived. The motion of Dr. Ambedkar alone was adopted.]

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†Mr. Vice-President : It seems to me that the amendment of Prof. K. T. Shah, as well as the next set of amendments up to No. 175 fall through alter the acceptance of Dr. Ambedkar's amendment.

(Amendment No. 176 was not moved.)

.....That finishes Article 3. Is there anyone who wishes to discuss the Article as a whole ?

Pandit Lakshmi Kanta Maitra (West Bengal : General) **:** What will be the position if the Honourable member is allowed to speak on the Article as a whole ? Will Dr. Ambedkar be called upon to reply to that again ?

Mr. Vice-President : Most certainly not.

Pandit Lakshmi Kanta Maitra : That whole article has not yet been disposed of and Dr. Ambedkar has so far replied only to the amendment and not to the whole article.

Mr. Vice-President : We shall listen to the Honourable member and if he traverses old ground, we shall ask him to desist.

Pandit Lakshmi Kanta Maitra : Therefore, Dr. Ambedkar is not entitled to reply as a right ?

Mr. Vice-President : No.

Shri M. Ananthasayanam Ayyangar (Madras : General) **:** That is hypothetical. It does not arise.

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*CAD, (Official-Report), Vol. VII. 18th November 1948, p. 461.

†*Ibid.,* p. 462.

***Mr. Vice-President :** The question is :

"That Article 3, as amended, form part of the Constitution."

The Motion was adopted.

ARTICLE 4

* * * * *

Mr. Naziruddin Ahmad (Bengal : Muslim) : Sir, I beg to move :

"That the words 'of this Constitution' he deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a now definition (bb) he inserted in clause (1) of article 303 :—

'(bb) "article" means article of this Constitution'."

[This was followed by speech.]

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Mr. Vice-President : The Honourable Member may move all his amendments to Article 4, one after the other up to amendment No. 181 on the order paper, and be as brief as possible.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (1) of article 4, for the words 'article 2 or article 3', the words and figures ' article 2 or 3', be substituted."

I submit that the word 'article' need not be repealed as it is done in clause (1) and, in fact in many places in this Draft Constitution.

Then I move:

"That in clause (1) of article 4, for the winds and figures 'article 2 or article 3', the word and figure 'article 3' he substituted."

I move next :

"That in clause (1) of article 4, for the words 'shall contain such provisions for', the words 'shall also provide for' he substituted."

This is very simple amendment.

I now move my last amendment to this article :

"That in clause (2) of article 4, for the words 'for the purposes of', the words 'within the meaning of' be substituted."

This is only a verbal amendment.

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Mahboob Ali Baig Sahib Bahadur (madras : Muslim) : Sir, I move **amendment No.** 184 **:**

"That in clause (2) of article 4. for the words ' for the purposes of article 304', the words 'under article 304' be substituted."

The retention of the existing words will lead to some sort of complication. Therefore we should substitute the words 'under article 304'.

Shri H. V. Kamath : Mr. Vice-President, by your leave, I shall make a very brief observation on amendment No. 177 of my Honourable

*CAD, (Official Report), Vol. VII. 18th November 1948, pp. 465-66.

friend Mr. Naziruddin Ahmad. Before you call upon Dr. Ambedkar to reply, may I request him, in case he holds that amendment No. 177 should be rejected, to give us some reasons for his opposition and not merely repeat the trite formula 'I oppose this amendment' ?.....

.....In conclusion I repeat my request to Dr. Ambedkar not to merely repeat the formula 'I oppose', but give reasons as to why he does so.

Shri Rohini Kumar Chaudhari : I have come to the rostrum to honour my friend Mr. Naziruddin Ahmed by opposing this amendment (*Laughter*).....

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***The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, I did not think that this was a matter which required any speech from me, but as Mr. Kamath has expressed a desire that I must not merely negative the amendment but should offer an explanation as to why I was not prepared to accept the amendments suggested by my Honourable Friend, Mr. Naziruddin Ahmad, I have come here to make my explanation. I think it will be agreed that in mailers of this sort, which relate merely to phraseology and not to the substance of the article itself, it cannot be staled that it is a matter of principle at all. It is a mere matter of precedent how different Constitutions have used language in matters which are analogous. My submission is that in the language we have used we are absolutely covered by precedent with regard to the question of repeating the phrase "of this Constitution". My friend, Mr. Kamath, stated that he has examined several constitutions such as that of Australia and of some other countries but did not find this phrase "of this Constitution" contained therein. I am sorry that he did not extend his researches to the Irish Constitution. If he had, he would have found that the phraseology used in the Draft Constitution is the same as is used in the Irish Constitution. For his reference, I would like to draw his attention to Article 19 of the Irish Constitution, article 27, sub-clause (4), article 32 and article 46, sub-clause (5) where he will find that, wherever the word "article" occurs, it is followed by the phrase "of this Constitution".

I may also point out to Mr. Kamath that in this respect we have also followed the phraseology contained in the Government of India Act 1935. I am sorry I have not had the time to examine all the sections of the Government of India Act but I have just, fortunately for myself, found one section which is 142-A where similar phraseology has been

*CAD, (Official Report). Vol. VII. 18th November 1948. pp. 467-68.

used. So far therefore as the first part of the amendment moved by my Honourable friend, Mr. Naziruddin, is concerned, my submission is that we have not acted in any eccentric manner but that whatever phraseology we have used is covered by the Constitutions of other countries as well.

With regard to his second amendment that we should not repeat the word "article" alter the word "or" and that we should merely say, "article 2 or 3", my submission is again the same. There again we have followed well known Constitutions and if my friend will examine them, he will find that similar phraseology occurs elsewhere also. For his information, I would ask him to refer to section 69, sub-clause (3), of the Government of India Act. The word used there is "paragraph". It says, "paragraph (d) or paragraph (e)". It does not merely say, "paragraph (d) or (e)". Therefore this can hardly be a matter of debate or a matter of difference of opinion so far as the principle is concerned. It is a mere matter of precedent and the question to be asked is : Have we done something which is not covered by precedent ? And my submission is this, that whatever we have done in the matter of using phraseology is covered by precedent and therefore, there can be no objection to any clause as it stands in the draft.

Mr. Naziruddin Ahmad : Then what about clause (2) of Article 4 ? I think there should be a short notice amendment to use the words "of this Constitution" in clause (2) in order to make the draft clear.

Mr. Vice-President: We cannot create a bad precedent by admitting a short notice amendment.

The Honourable Dr. B. R. Ambedkar : I cannot accept it, Sir.

Mr. Vice-President : In that case, I shall put the amendments to vote one by one.

[All the amendments of Mr. Naziruddin Ahmed were negatived and clause (1) and clause (2) of Article 4 stood part of the Constitution.]

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ARTICLE 28

***Mr. Vice-President :** The next amendment stands in the name of Mr. Kamath, No. 838. Are you moving amendment No. 838 ?

Shri H. V. Kamath : Mr. Vice-President, I move :

"That in the heading under Part IV for the word 'Directive', the word 'Fundamental' to substituted."

*CAD, (Official Report), Vol. VII. 19th November 1948. p. 474.

Sir, while moving this amendment for the consideration or" my Honourable Friend Dr. Ambedkar and of the House, I would like to advance only two reasons for the same.....

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Sir, I am sorry I cannot accept either of the two amendments.† Mr. Kamath's amendment is really incorporated in the phraseology as it now stands ; the word "Fundamental" occurs, as Mr. Kamath will find, in the very first Article of this part. Therefore his object that these principles should be treated as fundamental is already achieved by the wording of this Article.

With regard to the word "directive" I think it is necessary and important that the word should be retained because it is to be understood that in enacting this part of the Constitution the Constituent Assembly, as I said, is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power which they will have. If the word "directive" is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose. Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country. I therefore submit that both the words "fundamental" and "directive" are necessary and should be ratained.

[The motion of Mr. Kamath was negatived.]

Shri H. V. Kamath : Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : We shall now take up amendment Nos. 841 to 846. The movers will kindly move them one after another and then there will be a discussion.

Amendment No. 841 is a negative one and therefore it is ruled out of order.

*CAD, (Official Report). Vol. VII, 19th November 1948, p. 476.

†This amendment of Mr. Kamath included No. 838 and 840.

Since the Member concerned is not here, Amendment No. 842 falls Through.

Amendment Nos. 843 to 846—Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I shall be moving Nos. 843, 844 and 846. I shall not be moving No. 845.

Sir, I move.

"That in article 28. the words 'unless the context otherwise requires' be omitted."

"That in article 28, for the word 'requires'. the word 'indicates' be substituted."

"That in article 28, for the words 'the State'. the word 'State' be substituted."

[This was followed by Mr. Ahmed's speech.]

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***The Honourable Dr. B. R. Ambedkar :** Sir, I oppose the amendments of my Friend, Mr. Naziruddin Ahmad. The words "the State" in Article 28 have been used deliberately. In this Constitution, the word "State" has been used in two different senses. It is used as the collective entity, either representing the Centre or the Province, both of winch in certain parts of the Constitution are spoken of as "State". But the word used there is in a collective sense. Here the words "the State" are used both in a collective sense as well as in the distributive sense. If my friend were to refer to part III, which begins with Article 7 of the Constitution, he will see in what sense the word "State" is used. In this part, unless the context otherwise requires, "the State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. So that, so far as the Directive Principles are concerned, even a village *panchayat* or a district or local board would be a State also. In order to distinguish the sense in which we have used the word we have thought it desirable to speak of 'State' and also 'the State'. Honourable Members will find this distinction also made in Article 12 of the Constitution. There we say :

"No title shall be conferred by the State ;

"No citizen of India shall accept any title from any foreign State."

There we do not use the words "the State"; but in the first part we use the words 'the State'. We do not want any of the authorities, either of the Centre or of the provinces, to confer any title upon any individual. That being the distinction, the House will realise that the retention of the words 'the State' in Article 28 is in consonance with

*CAD. (Official Report), Vol. VII, 19th November 1948, pp. 477-78

the practice we have adopted in drafting this Constitution.

Mr. Vice-President : I shall now put these three amendments to vote.

[All the amendments of Mr. Naziruddin Ahmad were negatived. Article 28 was added to the Constitution.]

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[All the amendments to article 29 were negatived and the article was adopted.]

ARTICLE 30

***Mr. Naziruddin Ahmad :** .....Sir, I beg to move:

"That in article 30, the words 'strive to' be omitted."

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†**Shri H. V. Kamath :** Sir I move amendment No. 870 :

"That in article 30, the word "The" occurring before the words "national life" be deleted."

Sir, I was rather reluctant to give notice of this amendment, considering that it is or a minor character; but somehow the word 'the' jarred upon my ear and ultimately I decided to send it on. I am not so presumpous as to advise my learned Friend Dr. Ambedkar or his wise colleagues of the Drafting Committee on matters of language ; but I do hope that in this case, the word 'the' jars upon their ears as much as it does on mine, and it does violence to the laws of euphony. So I request him to omit it.

The Honourable Dr. B. R. Ambedkar : I accept the amendment.

Mr. Vice-President : No 871 not moved.

Now the Article is open for general discussion.

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†**Shri Mohanlal Gautam :** Is the discussion going to be closed now ?

Mr. Vice-President : I have given a reasonable time for discussion, both for and against the amendments.

Shri Mohanlal Gautam : Will you please permit me to speak ?

Mr. Vice-President : I maintain that we have had a reasonable amount of time—merely an hour—for discussion and Dr. Ambedkar should now address the House.

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*CAD, (Official Report). Vol. VII, 19th November 1948, p.487.

†*Ibid.,* pp. 487-88.

‡*Ibid.,* p. 493.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles. It is quite possible that the misunderstanding or rather inadequate understanding is due to the fact that I myself in my opening speech in support of the motion that I made, did not refer to this aspect of the question. That was because, not that I did not wish to place this matter before the House in a clear-cut fashion, but my speech had already become so large that I did not venture to make it more tiresome than I had already done ; but I think it is desirable that I should take a few minutes of the House in order to explain what I regard as the fundamental position taken in the Constitution. As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By parliamentary democracy we mean 'one man, one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is because we do not want to instal by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That ideal is economic democracy, whereby, so far as I am concerned, I understand to mean, 'one man, one vote'. The question is : Have we got any fixed idea as to how we should bring about economic democracy ? There are various ways in which people believe that economic democracy can be brought about ; there are those who believe in having a socialistic state as the best form of economic democracy ; there are those who believe in having a socialistic state as the best form of economic democracy ; there are those who believe in the communistic idea as the most perfect form of economic democracy.

*CAD, (Official Report), Vol. VII, 22nd November 1948. p.p 494-95.

Now, having regard to the fact that these various ways by which economic democracy may be brought about, we have deliberately introduced in language that we have used, in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. I think, if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really two-fold : (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government whatever, it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear.

My friend Mr. Tyagi made an appeal to me to remove the word 'strive', and phrases like that. I think he has misunderstood why we have used the word 'strive'. The word 'strive' which occurs in the Draft Constitution, in my judgment, is very important. We have used it because our intention is that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfilment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances

are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go. I think my friend Mr. Tyagi will see that the word 'strive' in this context is of great importance and it would be very wrong to delete it.

As to the rest of the amendments, I am afraid I have to oppose them.

Mr. Vice-President : Only two amendments have been moved : I shall put them to vote. The first is amendment No. 863 by Shri Damodar Swamp Seth.

The amendment was negatived.

Shri H. V. Kamath : I am not pressing my amendment, Sir.

Mr. Vice-President : The next one is amendment No. 867 by Mr. Naziruddin Ahmad.....

The amendment was negatived.

***Shri L. Krishnaswami Kharathi** (Madras : General) : Sir, Mr. Kamath must have the leave of the House to withdraw his amendment.

Mr. Hussain Imam : The Mover has accepted the amendment !

Mr. Vice-President : Does the House give him leave to withdraw ?

Several Honourable Members : Yes.

Shri L. Krishnaswami Bharathi : I object to leave being granted.

The Honourable Dr. B. R. Ambedkar : If he wants to withdraw, I have no objection ; let him withdraw.

Shri H. V. Kamath : There seems to be some conflict in the House over this. One Honourable Member thinks that Dr. Ambedkar has accepted it. I did not know that he had accepted it. If he has accepted it, then, no question of withdrawal arises.

Mr. Vice-President : Do you wish to withdraw ?

Shri H. V. Kamath : Yes. The amendment was, by leave of the Assembly, withdrawn.

Article 30 was added to the Constitution.

ARTICLE 30-A

†Mr. Vice-President (Dr. H. C. Mookherjee) **:** .....We shall now resume discussion on new Article 30-A. Does any member want to speak on amendment No. 872 ?

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*CAD, (Official Report), Vol. VII, 10th November 1948, p. 495.

†*Ibid.,* 22nd November 1948, p. 501.

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Sir, I have not followed exactly what it is, hut if it is a matter which relates to prohibition...

Mr. Vice-President : Yes.

The Honourable Dr. B. R. Ambedkar : Then, it has been agreed between myself and Mr. Tyagi that he will move an amendment to Article 38, and I propose to accept his amendment. So, this matter may be postponed until we come to the consideration of Article 38.

Mr. Vice-President : Then we shall pass on to the next amendment No. 873.

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†Mr. Vice-President : I have not been able to make out whether this amendment (No. 874) has been formally moved.

Shri Raj Bahadur : I have not formally moved it. I have simply had my say on it, to invoke the attention of the House on this question.

Shri H. V. Kamath (C.P. & Berar : General) : ..... I do not want to traverse the ground which I covered in the course of my speech on Dr. Ambedkar's motion. I would only express the hope that where the type of capitalist, parliamentary democracy typified by Europe and America and the centralised socialism typified by the Soviet Union have failed to bring peace, happiness and prosperity to mankind, we in India might be able to set up a new political and economic pattern, and that we would be able to realise the vision of Mahatma Gandhi's Panchayat Raj and, through this system of decentralised socialism, we will lead mankind and the world to the goal of peace and happiness.

I, therefore with your leave formally move this amendment and make a personal request to you to hold this over till such time as the other amendments to this Article are ready for discussion, I shall read my amendment.

> "That after article 30, the following new article he inserted :
>
> '30-A. The State shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration.'."

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment ?

The Honourable Dr. B. R. Ambedkar : I move that this matter do stand over.

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*CAD, (Official Report), Vol. VII, 22nd November 1948, p. 501.

†*Ibid.,* pp. 503-04

Mr. Vice President : I find that there is an amendment, to add a new article 31-A, numbered 927 in the list, standing in the name of Shri K. Santhanam. This, as well as that amendment may be considered together. Is it the wish of the House that this may be done ?

Honourable Members : Yes.

ARTICLE 31

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***Mr. Vice-President :** The House will now take up article 31, for discussion.

Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** Sir, I beg to move :

> "That in clause (i) of article 31, the words 'men and women equally' be omitted."

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The Honourable Dr. B. R. Ambedkar : I oppose the amendment, Sir.

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†Shri S. V. Krishnamoorthy Rao (Mysore) **:** Sir, I move :

> "That in clause (v) of article 31, for the words 'that the strength and health' the words 'that the health and strength' be substituted."

My amendment is only in order to rearrange the phraseology. My only justification is that strength follows health and the phraseology sounds better, Sir, I move.

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‡Shri Brajeshwar Prasad (Bihar : General) **:** May I speak, Sir ?

Mr. Vice-President: I am very sorry. I think there has been sufficient discussion. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the many amendments that have been moved to this particular article, there are only four that remain for consideration. I will first take up the amendment of Mr. Krishnamoorthy Rao. It is a mere verbal amendment and I say straightaway that I am quite prepared to accept that amendment.

Then there remain the three amendments moved by my friend, Professor K. T. Shah. His first amendment is to substitute the words "every citizen" for the words "the citizens". Now, if that was the

*CAD, (Official Report. Vol. VII, 22nd November 1948. p. 504.

†*Ibid.,* p. 513.

‡*Ibid.,* p. 518.

only amendment he was moving, I would not have found myself in very great difficulty in accepting his amendment, but he also proposes to remove the words "men and women equally" to which I have considerable objection. I would therefore ask him not to press this particular amendment on the assurance that, when the Constitution is gone through in this House and is remitted back to the Drafting Committee for the consideration of verbal changes, I shall be quite prepared to incorporate his feelings as I can quite understand that "every citizen" is better phraseology than the words "the citizens".

With regard to his other amendments, *viz.,* substitution of his own clauses for sub-clauses (ii) and (iii) of Article 31, all I want to say is this that I would have been quite prepared to consider the amendment of Professor Shah if he had shown that what be intended to do by the substitution of his own clauses was not possible to be done under the language as it stands. So far as I am able to see, I think the language that has been used in the Draft is a much more extensive language which also includes the particular propositions which have been moved by Professor Shah, and I therefore do not see the necessity for substituting these limited particular clauses for the clauses which have been drafted in general language deliberately for a set purpose. I therefore oppose his second and third amendments.

Mr. Vice-President : I shall now put the amendments to the vote, one by one.

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[In all eight amendments were negatived. One was dropped. Only one amendment, that of Mr. Krishnamoorthy Rao was accepted and adopted. Article 31 was accordingly amended and added to the Constitution.]

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ARTICLE 31-A

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†Mr. Vice-President : Let Mr. Santhanam move.

The Honourable Shri K. Santhanam : Sir, I beg to move :

"That alter article 31. the following new article he added: —

"**31-A.** The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government."

The Honourable Dr. B.R. Ambedkar: Sir, I accept the amendment.

*CAD, (Official Report), Vol. VII, 22nd November 1948, pp. 518-19

†*Ibid.,* p. 520.

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***The Honourable Dr. B. R. Ambedkar :** Sir, as I accept the amendment. I have nothing more to add.

(An Honourable Member rose to speak.)

Mr. Vice-President : In this matter my decision is final. I have not yet found anybody who has opposed the motion put forward by Mr. Santhanam. There might be different ways of praising it, but at bottom and fundamentally, these speeches are nothing but praising the amendment.

The motion was adopted.

Article 31-A was added to the Constitution.

ARTICLE 32

†Shri Syamanandan Sahay (Bihar : General) : Sir, I will move amendments Nos. 933 and 934 together with your permission. I move :

"(i) That in the article 32 after the word 'education' a comma and the words 'to medical aid' be added ; and

(b) that for the words 'of undeserved want' the words "deserving relief be substituted."

* * * * *

‡The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I oppose the amendments.

Mr. Vice-President (Dr. H. C. Mookherjee) : I put the amendments to vote.

[Amendments Nos. 933 and 934, and 936 as further amended were negatived.]

ARTICLE 34

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#Mr. Vice-President: The amendment of Mr. Ramalingam Chettiar runs as follows :

"And in particular the State shall endeavour to promote cottage industries on co operative lines in rural areas."

That is the language of the amendment moved by Mr. Chettiar. Therefore, it is in order. Now the article is open for general discussion.

* * * * *

$Shri S. Nagappa (Madras : General) **:** Sir, I do not want to take time of the House. I just want to make an amendment. After the words 'to all workers, industrial', the word 'agricultural' may be added.

*CAD, (Official Report). Vol. VII, 22nd November 1948. p. 527.

†*Ibid*., 23rd November 1948. p. 329.

‡*Ibid*., p. 529.

#*Ibid*., p. 532.

$*Ibid*., pp. 534-35.

Sir, I need not say that the bulk of the working population consists of agricultural workers.

Mr. Vice-President : This is out of order.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, as there is a considerable amount of feeling that the Directive Principles should make some reference to cottage industries, I am agreeable in principle to introduce in article 34 some words to give effect to the wishes of the Members of this House. I am therefore prepared to accept the amendment moved by my friend Mr. Ramalingam Chettiar, subject to the substitution of one or two words. One substitution that I would like to make is this. After the words "cottage industries on" I would like to add the words "individual or". I would like to substitute his word 'lines' by the word 'basis '. So that the amendment would read as follows :

> "And in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas."

That, I think, would meet the wishes of most of the Members who are particularly interested in the subject.

I may also add that I am quite agreeable to accept the amendment moved by Mr. Nagappa that the word 'agricultural' be added after the word 'industrial'.

Vice-President : That was not allowed.

The Honourable Dr. B. R. Ambedkar : I have no objection if you allow that. I think Mr. Nagappa's suggestion that agricultural labour is as important as industrial labour and should not be merely referred to by the word 'otherwise' has some substance in it. However, it is a matter of ruling and it is for you to decide.

Shri T. A. Ramalingam Chettiar : I accept Dr. Ambedkar's amendments.

Shri L. Krishnaswami Bharathi : (Madras :General) : Sir, may I suggest that we may stop with the word collage industries and omit the rest. Why do you want the words 'on individual or co-operative basis' ? There is no point in adding these words unless you want to lay special emphasis on co-operative basis. I would like these words 'on individual or co-operative basis' to be omitted.

Honourable Dr. B. R. Ambedkar : May I explain, Sir ? I find among the Members who are interested in the subject, there are two

divisions : one division believes in cottage industries solely on a cooperative basis ; the other division believes that there should be cottage industries without any such limitation. In order to satisfy both sides. I have used this phraseology deliberately, which, I am sure, will satisfy both views that have been expressed.

Shri M. Ananthasayanam Ayyangar : (Madras : General) : I do not want to speak.

Mr. Vice-President : I think we have discussed this matter sufficiently. We shall pass on to the actual voting.

Shri Mahavir Tyagi : In the hope that this will all be done on the basis of self-sufficiency, I accept the amendment to my amendment as finally proposed by Dr. Ambedkar and in that case I shall have to withdraw mine.

The amendment was, by leave of the Assembly, withdrawn.

Shri Amiyo Kumar Ghosh : Sir, I want to know whether 'agricultural workers' have been included or not.

Mr. Vice-President: It has not been included but I am quite prepared to go back on my ruling provided the House as a whole, without any dissention, accepts the suggestion of Dr. Ambedkar.

Honourable Members : Yes.

Mr. Vice-President : Then I shall put the amendment of Shri Ramalingam Chettiar as amended by Dr. Ambedkar to the vote.

The amendment, as amended, was adopted.

The amendment, as further modified by Mr. Nagappa was adopted.

Article 34, as amended, was added to the Constitution.

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ARTICLE 35

***Mr. Vice-President :** Now, we come to article 35.

The Honourable Dr. B. R. Ambedkar : Sir, I have to request you to allow this article to stand over for the present.

Mr. Vice-President : This article is allowed to stand over for consideration later. Is it agreed to by the House ?

Honourable Members : Yes.

*CAD. (Official Report). Vol. VII. 23rd November 1948, p. 538.

ARTICLE 36

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Pandit Lakshmi Kanta maitra : (West Bengal: General): Mr. Vice-President, Sir I beg to move:

> "That in article 36, the words 'Every citizen is entitled to free primary education and' be deleted."

Sir, I will strictly obey the injunction given by you regarding curtailment of speeches. I will put in half a dozen sentences to explain the purpose of this amendment. If this amendment is accepted by the House, as I hope it will be, then the article will read as follows :

> "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." .....

* * * * *

Mr. Naziruddin Ahmad : (West Bengal : Muslim) : Sir, I beg to move :

> "That in article 36, for the word 'education', the words 'primary education' be substituted."

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***The Honourable Dr. B. R. Ambedkar :** Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words "every citizen is entitled to free primary education and". But I am not prepared to accept the amendment of my Friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my Honourable Friend, Mr. Naziruddin Ahmad had referred to article 18, which forms pan of the Fundamental Rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate in that particular clause, and I therefore oppose his amendment.

[The motion of Pandit Maitra was adopted. The motion of Naziruddin Ahmad was negatived.]

Article 36, as amended, was added to the Constitution.

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*CAD, (Official Report), Vol. VII, 22nd November 1948, p. 538.

†*Ibid*., 540

ARTICLE 35

***Mr. Mohamad Ismail Sahib** (Madras : Muslim) **:** Sir, I move that the following proviso be added to article 35 :

> "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

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†The Honourable Dr. B. R. Ambedkar : Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my Friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statements, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts ; and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a tiling seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

*CAD. Vol. VII, 23rd November 1948, p. 540.

†*Ibid.*, p. 550.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the Held and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My Honourable friends have forgotten, that, apart from the Northwest Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malbar the Marumakkathayam Law applied to all—not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Partriarchal form of law.

The Mussulmans, therefore, in North Malbar were up to now following the Marumakkathayam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu Law, not because they were contained in Hindu Law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the farmers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the Slate shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans provided a Mussulman who wanted that he should be bound by the Shariat Act should go to an officer of the State, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for Parliament to introduce a provision of that sort ; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

[The motion of Mohd. Ismail Saheb and that of B. Pocker Sahib Bahadur were negatived. Article 35 was added to the Constitution.]

ARTICLE 37

***Sardar Hukum Singh** (East Punjab : Sikh) **:** Mr. Vice-President, I move :

> "That in article 37, for the words 'Scheduled Castes' the words 'Backward communities of whatever class or religion' be substituted."

Sir, "Scheduled Castes" has been defined in article 303 (w) of this Draft Constitution as castes and races specified in the Government of India (Scheduled Castes) Order 1936. In that Order, most of the tribes, castes and subcastes are described and include Bawaria, Chamar, Chuhra, Balmiki, Od, Sansi, Sirviband and Ramdasis. It would be conceded that they have different faiths and beliefs. For instance, there are considerable numbers of Sikh Ramdasis, Odes, Balmikis and

*CAD. Vol. VII, 23rd November 1948, pp. 552-53.

Chamars. They are as backward as their brethren of other beliefs. But, so far, these Sikh backward classes have been kept out of the benefits meant for Scheduled Castes. The result has been either conversion in large numbers or discontent.

I do realise that so far as election to legislatures was concerned, there could be some justification as the Sikhs had separate representation and the Scheduled Castes got their reservation out of General Seats. There is the famous case of S. Gopal Singh Khalsa who could not be allowed to contest a seat unless he declared that he was not a Sikh. Such cases have led to disappointment and discontent on account of a general belief that some sections were being discriminated against.

Now the underlying idea is the uplift of the backward section of the community so that they may be able to make equal contribution in the national activities. I fully support the idea. I may be confronted with an argument that at least there is the first part of the article which provides for promotion "of educational and economic interests of 'weaker sections' of the people". So far it is quite good and it can apply to every class. But, as the "weaker sections" are not defined anywhere, the apprehension is that the whole attention would be directed to the latter part relating to 'Scheduled Castes' and 'weaker sections' would not mean anything at all. Even the article lays the whole stress on this latter portion by centralising attention through the words 'in particular' of the 'Scheduled Castes'.

I may not be misunderstood in this respect. I do not grudge this special care of the State being directed towards "Scheduled Castes". Rather, I would support even greater concessions being given and more attention being paid to backward classes. My only object is that there should be no discrimination. That is not the intention of the article either. But, as I have said, so far the "Scheduled Castes" have been understood by general masses to exclude the members of the same castes professing Sikh religion. We should be particular in guaranteeing against any misconstruction being placed or any discrimination being exercised by those who would be responsible for actual working of it. Under the present article, it is the "educational and economic interests" that are to be promoted and therefore it should be made clear that it is to be done for all backward classes, and not for persons professing this or that particular religion or belief. I commend this motion for the acceptance of the House.

Shri A. V. Thakkar (United Stales of Kathiawar : Saurashtra) **:** Sir, I beg to move this amendment (983) which asks for the inclusion of the backward castes among Hindus and among Muslims...

The Honourable Dr. B. R. Ambedkar : May I just make a statement ? I believe both these amendments dealing with the backward classes, etc. would be more appropriate to the Schedule and could be better considered when we dealt with the Schedule. I would suggest that the consideration of these amendments may be postponed.

Shri A. V. Thakkar : My amendment seeks to lay down certain principles...

Mr. Vice-President : Dr. Ambedkar proposes to give the fullest possible consideration to these in the Schedule.

Shri A. V. Thakkar : Does he agree to include all backward classes ?

Mr. Vice-President : He can hardly agree to anything now. The matter is open to discussion later.

Shri A. V. Thakkar : Then I do not move my amendment now.

Mr. Naziruddin Ahmad : Sir, I am not moving my amendment No. 985. It merely seeks to use capital letters in the case of the Scheduled Castes. I would respectfully draw the attention of the Chairman of the Drafting Committee to article 303 (1), items (w) and (x) on page 147 of the Draft Constitution. We have there specified two definitions, 'Scheduled Castes' and 'Scheduled Tribes'. 'Scheduled Castes' have everywhere been spelt with capital letters, but 'Scheduled tribes' have been spelt with small letters.

The Honourable Dr. B. R. Ambedkar : We shall consider that.

Sardar Hukum Singh : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

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Article 37 was added to the Constitution.

ARTICLE 38

* * * * *

***Mr. Vice-President:** We shall commence today's proceedings with the consideration of the particular article with which we are concerned today in the Draft Constitution. The introduction of the Bill will be taken up after a little while.

*CAD, Vol. VII, 24th November 1948, p. 555

Prof. Shibban Lal Saksena : (United Provinces : General) : I am tabling an amendment which is an amendment of Mr. Mahavir Tyagi's. I hope it will be acceptable to him, because in his amendment, he has not included the words 'except for medicinal purposes'. I think that if the amendment of Mr. Mahavir Tyagi is accepted as amended by my amendment, it would become much better. I wish Dr. Ambedkar to accept my amendment which is mentioned in No. 86 of list IV.

Sir I beg to move :

"That at the end of article 38, the following he substituted:—

'and shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes' ".

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, I accept the amendment of Prof. Shibban Lal Saksena subject to a further amendment, namely, that after the word ' and ' at the beginning of his amendment (86 of List IV) the words " in particular " be added.

Shri Mahavir Tyagi : I really cannot understand how that amendment can be accepted by the Honourable Dr. Ambedkar. The amendment under discussion is mine.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment of Mr. Tyagi as amended by the amendment of Prof. Shibban Lal Saksena (Laughter).

Mr. Vice-President : Mr. Tyagi is a great stickler for rights.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say so, the right really belongs to me, because it is I who drafted the amendment he moved. (Renewed laughter.)

Mr. Vice-President : That puts the matter in a new light.

The Honourable Dr. B. R. Ambedkar : I do not think the House would have found any difficulty in accepting this amendment. Two points have been raised against it. One is by Prof. Khandekar who represents Kolhapur in this Assembly. I am sure that Mr. Khandekar has not sufficiently appreciated the fact that this clause is one of the clauses of an Article which enumerates what are called Directive Principles of Policy. There is therefore no compulsion on the State to act on this principle. Whether to act on this principle and when to do so are left to the State and public opinion. Therefore, if the State thinks that the time has not come for introducing prohibition or that it might

*CAD. Vol. VII, 24th November 1948. pp. 566-67.

be introduced gradually or partially, under these Directive Principles it has full liberty to act. I therefore do not think that we need have any compunction in this matter.

But, Sir, I was quite surprised at the speech delivered by my friend Mr. Jaipal Singh. He said that this matter ought not to be discussed at this stage, but should be postponed till we take up for consideration the report of the Advisory Committee on Tribal Areas. If he had read the Draft Constitution, particularly the Sixth Schedule, paragraph 12, he would have found that ample provision is made for safeguarding the position of the tribal people with regard to the question of prohibition. The scheme with regard to the tribal areas is that the law made by the State, whether by a province or by the Centre, does not automatically apply to that particular area. First of all, the law has to be made. Secondly, the District Councils or the Regional Councils which are established under this Constitution for the purposes of the administration of the affairs of these areas are given the power to say whether a particular law made by a province or by the Centre should be applied to that particular region inhabited by the tribal people or not, and particular mention is made with regard to the law relating to prohibition. I shall just read out sub-paragraph (a) of paragraph 12 which occurs on page 184 of the Draft Constitution. It says :

> "Notwithstanding anything contained in this Constitution—
>
> (a) no Act of the legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;"

Now, I do not know what more my friend, Mr. Jaipal Singh, wants than the provision in paragraph 12 of the Sixth Schedule. My fear is that he has not read the Sixth Schedule : if he had read it, he would have realised that even though the State may apply its law regarding prohibition in any part of the country, it has no right to make it applicable to the tribal areas without the consent of the District Councils or the Regional Councils.

Mr. Vice-President : There are three amendments. One is by Mr. Mahavir Tyagi. That is No. 71 in List II. If I read the situation aright, that has been practically withdrawn. Am I right, Mr. Tyagi ?

Shri Mahavir Tyagi : I have not withdrawn my amendment. I have only accepted the words which Prof. Shibban Lal Saksena intends to add to my amendment.

Mr. Vice-President : I want to know whether you want that your amendment should be put separately to the vote.

Shri Mahavir Tyagi : Yes, Sir, of course. As I have said, I want to abolish liquor altogether. He wants to add the words "except for medical purposes". Therefore my amendment is the original amendment.

Mr. Vice-President : I understand the situation. I shall now put to the vole the amendment of Mr. Mahavir Tyagi as modified by Professor Shibban Lal Saksena and further modified by Dr. Ambedkar.

Shri Mahavir Tyagi: On a point of order, Dr. Ambedkar has added the word "particular" but he has not taken my permission.

Mr. Vice-President : I take your permission on behalf of Dr. Ambedkar.

Shri Mahavir Tyagi : I accept his amendment also, Sir.

Mr. Vice-President: This particular amendment as amended is now put to the vote.

The amendment was adopted.

[Article 38 as amended, was added to the Constitution.]

* * * * *

ARTICLE 38-A.

***Pandit Thakur Dass Bhargava** (East Punjab : General) : †[Mr. President, the words of the amendment No. 72 which I am moving in place of amendment No. .1002, are as follows :—

"That for amendment No. 1002 of the lists of amendments to 38-A the following he substituted :—

"38-A. The State shall endeavour to organise agriculture and animal husbandry on modem and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock

At the very outset I would like to submit that this amendment...

Shri S. Nagappa : (Madras : General) : Sir, on a point of order, my Honourable friend, who can speak freely in English, is deliberately

*CAD, Vol. VII, 24th November 1948, p. 568.

† Translation of Hindustani speech.

talking in Urdu or Hindustani which a large number of South Indians cannot follow.

Mr. Vice-President : The Honourable Member is perfectly entitled to speak in any language he likes but I would request him to speak in English though he is not bound to speak in English.

Pandit Thakur Dass Bhargava : I wanted to speak in Hindi which is my own language about the cow and I would request you not to order me to speak in English. As the subject is a very important one, I would like to express myself in the way in which I can express myself with greater ease and facility. I would therefore request you kindly to allow me to speak in Hindi.

*[Mr. Vice-President, with regard to this amendment I would like to submit before the house that in fact this amendment like the other amendment, about which Dr. Ambedkar has stated, is his manufacture....

* * * * *

***The Honourable Dr. B. R. Ambedkar** : I accept the amendment of Pandit Thakur Dass Bhargava.

Mr. Vice-President : I shall now put the amendments one by one to the vote. The amendment of Pandit Thakur Dass Bhargava. That is No. 72 in List II.

[The motion was adopted.]

Article 38-A, as amended, was added to the Constitution.

ARTICLE 39

†Mr. Vice-President : Shall we now go on to the next item in the agenda ? No. 1003 has been covered by one of the previous amendments. No. 1004 has also been disposed of. Then No. 1005. The first part of it cannot be moved, but the second part can be moved. (Not moved.)

Then the motion before the House is that article 39 forms part of the Constitution. There are several amendments to this.

(Nos. 1006, 1007 and 1008 were not moved.) No. 1009 by Dr. Ambedkar and his colleagues.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted."

*CAD, Vol. VII, 24th November 1048, p. 580.

†*Ibid,* p. 581.

Prof. Shibban Lal Saksena : Mr. Vice-President, Sir, I beg to move :

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted, and all the words after the words 'may he' to the end of the article be deleted."

The Honourable Dr. B. R. Ambedkar : Why do you want to make a speech when I am going to accept it ?

Prof. Shibban Lal Saksena : I am glad that Dr. Ambedkar is going to accept it. Because this article is to be a directive principle, it should not mention about laws of Parliament and so we must omit the words "to preserve and maintain according to law made by Parliament all such monuments or places or objects."

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment.

* * * * *

Mr. Vice-President : I am now putting the amendments one by one.

The motion was adopted.

Mr. Vice-President : There is the amendment of Prof. Shibban Lal Saksena.

Begum Aizaz Rasul : (United Provinces : Muslim) : May I know if Dr. Ambedkar has accepted Prof. Shibban Lal Saksena's amendment ? If not, I wish to oppose the second part.

Mr. Vice-President : There is no second part so far as I am aware. It only refers to deletion of certain words. The first part is the same.

Begum Aizaz Rasul : I wish to oppose that motion.

Mr. Vice-President : I am afraid it is too late now. The motion was adopted.

Article 39, as amended, was added to the Constitution.

ARTICLE 39-A

***The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, I move:

"That after article 39, the following new article be inserted :—

'39-A. That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.'."

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been

*CAD, Vol. VII, 24th November 1948, p. 582.

continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform ; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this : that we deliberately did not make it a matter of fundamental principle, because if we had made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the Constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind. Sir I move.

* * * * *

ARTICLE 39-A

***Mr. Vice-President** (Dr. H. C. Mookherjee) : Notice of an amendment has been received from Dr. Ambedkar. Will you please move your amendment, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, I move:

> That in article 39-A delete the words beginning from " secure" up to "separation of" and in their place substitute the word, "separate".

so that the article 39-A, with this amendment would read as follows :—

> "The State shall take steps to separate the judiciary from the executive in the public services of the State."

The House will see that the object of this amendment is to eliminate the period of three years which has been stated in the original article as proposed by 39-A. The reasons why I have been obliged to make this amendment are these. There is a section of the House which feels that in these directive principles we ought not to introduce matters of details relating either to period or to procedure. These directive

*CAD. Vol. VII, 25th November 1948, pp. 585-86

principles ought to enunciate principles and ought not to go into the details of the working out of the principles. That is one reason why I feel that the period of three years ought to be eliminated from article 39-A.

The second reason why I am forced to make this amendment is this. The expression "three years" has again brought about a sort of division of opinion amongst certain members of the House. Some say, if you have three years period, then no government is going to take any step until the third year has come into duration. You are practically permitting the provincial legislatures not to take any steps for three years by mentioning three years in this article. The other view is that three years may be too short. It may be that three years may be long enough so far as provinces are concerned, where the administrative machinery is well established and can be altered and amended so as to bring about the separation. But we have used the word "State" in the directive principles to cover not only the provincial governments but also the governments of the Indian States. It is contended that the administration in the Indian States for a long time may not be such as to bring about this desired result. Consequently the period of three years, so far as the Indian States are concerned, is too short. All these arguments have undoubtedly a certain amount of force which it is not possible to ignore. It is, therefore, thought that this article would serve the purpose which we all of us have in view, if the article merely contained a mandatory provision, giving a direction to the State, both in provinces as well as in the Indian States, that this Constitution imposes, so to say, an obligation to separate the judiciary from the executive in the public services of the State, the intention being that where it is possible, it shall be done immediately without any delay, and where immediate operation of this principle is not possible, it shall, nonetheless, be accepted as an imperative obligation, the procrastination of which is not tolerated by the principles underlying this Constitution. I therefore submit that the amendment which I have moved meets all the points of view which are prevalent in this House, and I hope that this House will give its accord to this amendment.

Prof. Shibhan Lal Saksena (United Provinces : General) **:** Sir, Dr. Ambedkar has already moved an amendment, that is he has added a new article No. 39-A. Is it permissible to a member to amend his own amendment ?

Mr. Vice-President : Yes. I would request you all to bear in mind that we have to go to the fundamentals and not to technicalities.

Shri R. K. Sidhwa (C. P. and Berar: General)**:** Mr. Vice-President, Sir, I am very glad that Dr. Ambedkar has moved this amendment and that at this late stage better counsels and sense have prevailed....

The motion was adopted.

Article 39-A was added to the Constitution.

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***Mr. Mohd. Tahir** (Bihar : Muslim) **:** Mr. Vice-President, Sir, I beg to move : That after article 39, the following new article be inserted and the rest of the articles be renumbered :—

"40. It shall he the duty of the State to protect, safeguard arid preserve the places of worship such as Gurdwaras, Churches, Temples, Mosques including the graveyards and burning ghats."

* * * * *

†The Honourable Dr. B R. Ambedkar : Sir, I not accept the amendment.

Mr. Vice-President : I will now put the amendment to vote.

The amendment was negatived.

* * * * *

THE ARTICLE 40

‡Mr. Vice-President : No. 1018. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I understand Mr. Kamath is moving an amendment.

Shri H. V. Kamath : I shall be moving my amendment after Dr. Ambedkar has moved his.

The Honourable Dr. B. R. Ambedkar : Sir, I move : "that for the existing article 40, the following be substituted :—

"40. The State shall—

(a) promote international peace and security ;

(b) seek to maintain just and honourable relations between nations ; and

(c) endeavour to sustain respect for international law and treaty obligations in the dealings of organised people with one another."

Sir, this, amendment merely simplifies the original article 40 and divides it into certain parts separating each idea front the other so that any one who reads the article will get a clear and complete idea of what is exactly intended to be covered by article 40. The propositions

*CAD. Vol. VII, 25th November 1948, p. 593.

†Ibid., p. 594.

‡Ibid., p. 595.

contained in this new article are so simple that it seems to be super-arrogation to try to explain them to the House by any lenghty speech.

Sir, I move.

Mr. Vice-President : There are certain amendments to this which I am calling out. No. 74 Mr. Sarwate.

Shri V. S. Sarwate (United States of Gwalior-Indore-Malwa-Madhya Bharat). Mr. Vice-President, Sir, I beg to move an amendment to this amendment. My amendment stands thus :

"That in amendment No. 1018 of the list of amendments, in article 40, after the words "The State shall" and lie fore sub-clause (a), this new clause he inserted and the existing clause be renumbered accordingly :—

(a) foster truthfulness, justice, and sense of duty in the citizens."

* * * * *

***Shri H. V. Kamath :** .....Sir, I move—

"That in amendment 1018 of the list of Amendments in article 40, after the word, 'shall' the words ' endeavour to ' be inserted, in clause (b) the wods 'seek to' be deleted in clause (c) the words 'endeavour to ' be deleted."

Mr Vice-President : The question is that for the existing article 40, the following be substituted :—

So that if this amendment be accepted by the House the amendment of the Drafting Committee will read as follows :—

"40. The State shall endeavour to—

(a) promote international peace and security ;

(b) maintain just and honourable relations between nations ;

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another, and

(d) encourage the settlement of international disputes by arbitration."

This amendment seek only a slight structural change in the amendment brought forward by Dr. Ambedkar so as to bring out or indicate the directive character of the principle embodied in article 40 .....

* * * * *

†Mr. President : Mr. Ayyangar, will you move it formally ?

Shri M. Ananthasayanam Ayyangar : Sir, I move that in the amendment of Dr. Ambedkar, at the end add the following sub-clause :—

"and (*d*) to encourage the settlement of international disputes by arbitration."

The motion was adopted.

‡The Honourable Dr. B. R. Ambedkar : Sir I accept Mr. Kamath's three amendmednts. I accept Dr. Subbarayan's amendment and I accept the amendment moved by my Honourable friend, Mr. Ananthasayanam Ayyangar. I do not accept any other amendment.

The motion was negatived.

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*CAD, Vol. VII, 25th November 1948. p. 596.

†Ibid., pp. 595

‡Ibid., p. 604.

ARTICLE 7

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the following words be added at the end of article 7 :—

'or under the control of the Government of India'."

Sir, this amendment was thought necessary because apart from the territories which form part of India, there may be other territories which may not form part of India, but may none-the-less be under the control of the Government of India. There are many cases occurring now in international affairs where territories are handed over to other countries for the purposes of administration either under a mandate or trusteeship. I think it is desirable that there ought to be no discrimination so far as the citizens of India and the residents of those mandated or trusteeship territories are concerned in fundamental rights. It is therefore desirable that this amendment should be made so that the principle of Fundamental Rights may be extended to the residents of those territories as well.

* * * * *

†**Mr. Vice-President :** I would request Dr. Ambedkar to enlighten us about the points raised here by Mr. Ali Baig. We are laymen and we would like to hear him.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that although I had concentrated my attention on the speech of my friend who moved this amendment, I have not been able to follow what exactly he wanted to know. If his amendment is to delete the whole of article 7, I can very easily explain to him why this article must stand as part of the Constitution.

The object of the Fundamental Rights is two-fold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority—I shall presently explain what the word "authority" means—upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Government established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make by-laws.

*CAD, Vol. VII. 25th November 1948, p. 607.

†*Ibid.,* 610.

If that proposition is accepted—and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law—then, what are we to do to make our intention clear ? There are two ways of doing it. One way is to use a composite phrase such as "the State", as we have done in article 7 ; or, to keep on repeating every time, "the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority". It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words. I hope that my friend will now understand why we have used the word "State" in this article and why this article must stand as part of this Constitution.

Mr. Vice-President: I will now put tins amendment to the vote. First of all, we have amendment No. 21 of Mr. Naziruddin Ahmad, which is an amendment to amendment No. 246.

The question is :

> "That with reference to amendment No. 246 of the List of Amendments, in article 7 the words" and all local or other authorities, within the territory of India or under the control of the Government of India "he deleted."

The motion was negatived.

Mr. Vice-President : The next amendment is No. 246 moved by Dr. Ambedkar.

The question is : that the following words be added at the end of article 7 :

> "or under the control of the Government of India."

The motion was adopted.

[Two more amendments were negatived.]

Article 7, as amended, was added to the Constitution.

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ARTICLE 8

* * * * *

***Mr. Vice-President :** We have a quarter of an hour more. We can resume discussion of article 8 of the Draft Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal : General) **:** We may adjourn now.

Mr. Vice-President : Our time is valuable. We should not waste a quarter of an hour.

*CAD, Vol. VII, 26th November 1948, p. 640.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for clause (3) of Article 8, the following he substituted :—

'(3) In this article—

(a) the expression 'law' includes any ordinance, order, bye-law. rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

Sir, the reason for bringing in this amendment is this : It will be noticed that in article 8 there are two expressions which occur. In sub-clause (1) of article 8, there occurs the phrase "laws in force", while in sub-clause (2) the words "any law" occur. In the original draft as submitted to this House, all that was done was to give the definition of the term "law" in sub-clause (3). The term "laws in force" was not defined. This amendment seeks to make good that lacuna. What we have done is to split sub-clause (3) into two parts (a) and (b). (a) contains the definition of the term "law" as embodied in the original sub-clause (3), and (b) gives the definition of the expression "laws in force" which occurs in sub-clause (1) of article 8. I do not think that any more explanation is necessary.

* * * * *

***Mr. Naziruddin Ahmad :** Sir, before I move my amendment, I beg to point out that as a comprehensive amendment has been moved by the Honourable Dr. Ambedkar, I think the present amendment should be suitably adapted to apply to that amendment. I wish to move the second part of it only.

Mr. Vice-President : First of all, find out whether he accepts it or not.

Mr. Naziruddin Ahmad : Unless I argue the matter, he will not accept it. I think. Sir, this amendment will have to be accepted.

I beg to move :

That in amendment No. 260 which has been moved by Dr. Ambedkar, the words "custom or usage having the force of law in the territory of India or any part thereof be deleted.

Mr. Vice-President : How can you add to that amendment without giving notice ? It is out of order. You can only make a suggestion.

*CAD. Vol. VII. 26th November 1948, p. 641.

Mr. Naziruddin Ahmad : I have already given notice of an amendment to the original article. In view of the amendment of Dr. Ambedkar, there should be consequential changes.

Mr. **Vice-President :** All right.

* * * * *

***Mr. Naziruddin Ahmad :** I am very glad for the kind interruption. It does not remove my difficulties at all. Does it mean to say that the State 'makes' a custom or usage ? Still you have the difficulty to face that the State has to make a law including custom or usage.

The Honourable Shri B. G. Kher : Of course, it means ' whenever necessary'. That is always understood in law. I am sorry to interrupt.

The Honourable Dr. B. R. Ambedkar : Probably he may not find it necessary to continue his speech if I refer to him this fact, namely, that the expression "law" in (3) (a) has reference to law in 8 (1).

Mr. Naziruddin Ahmad : I am again grateful for the kind interruption of Dr. Ambedkar that the words 'custom and usage' have the force of law and so forth....

* * * * *

†**Mr. Vice-President :** Shall we resume discussion of article 8 ? Is there any Honourable Member who wishes to speak on it ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that that construction was not possible, for the simple reason, that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word 'Law' distributively, so that so far as article 8, sub-clause (1) was concerned, 'Law' would include custom, while so-far as sub-clause (2) was concerned, 'Law' would not include custom.

*CAD. Vol. VII, 26th November 1948. p. 642.

†*Ibid.,* VII. 29th November 1948, pp. 644-45.

That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise. But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be—

"Unless the context otherwise requires"

so that the article would read this way—

'In this article, unless the context otherwise requires—

(a) The expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression ……..'"

I need not read the whole thing.

So, if the context in article 8 (1) requires the term 'law' to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word 'law' to include custom, it would not be possible to read the word 'law' to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

Mr. Vice-President : I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list....

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is :

"That the proviso to clause (2) of article 8 he deleted."

The amendment was adopted.

[Amendment No. 259, standing in the name of Shri Lokanath Misra was negatived.]

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***Mr. Vice-President :** Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is :

"That for clause (3) of article 8, the following be substituted:—

* (3) In this article, unless the context otherwise requires,

(a) The expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

*CAD, Vol. VII, 26th November 1948, p. 645.

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repeated, notwithstanding that any such law or any part thereof may not he then in operation either at all or in particular areas '"

The amendment was adopted.

[Two more amendments were negatived.]

Article 8. as amended was added to the Constitution.

ARTICLE 8-A

* * * * *

***Mr. Vice-President :** The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

Shri Loknath Misra (Orissa : General) : Sir, I beg to move :

"That after article S, the following new article 8-A he inserted :

Right op Suffrage and Election

8-A. (1) livery citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.,* non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause hut they may be indirect, *i.e.,* the Poura and Grama Punehayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall he required to elect primary members, who in their turn, shall elect members to the Union Parliament and lo the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected Lo the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate will be elected by the People and even if there is no rival, no candidate shall be elected unless he gels at least ½ of the total votes."

* * * * *

†**Shri Algu Rai Shastri** (United Provinces : General) : Mr. President‡ I rise to oppose the amendment moved by my Friend. My first reason for doing so is that it has no relation to the question raised here. Matters relating lo elections have been dealt with in the Draft Constitution at other places where it has been staled as to how the Legislature shall be formed ; who shall be the members of the Legislatures ; what shall be their rights ; what shall be the procedure of their elections. Amendments of this nature may be moved in the article dealing with such things. This amendment is totally irrelevant lo Fundamental Rights of the Draft Constitution....

*CAD, Vol. VII. 29th November 1948. p. 646.

†*Ibid.,* 646.

‡Translation of Hindustani .speech.

...This amendment should be rejected outright and should never be accepted.

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment.

The motion of Loknath Misra was negatived.

ARTICLE 9

* * * * *

***Mr. Vice-President :** Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath : Mr. Vice-President, Sir, may I ask whether this is merely a verbal or at best a formal amendment liable to be disallowed ? It merely seeks to substitute the words 'State funds' in place of the words 'the revenues of the State'.

Mr. Vice-President : I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also ?

The Honourable Dr. B. R. Ambedkar : Sir, I move :

> "That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words 'the revenues of the State' the words 'State funds' he substituted."

The reason why the Drafting Committee felt that the words "the revenues of the State" should be replaced by the words "State funds" is a very simple tiling. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the Honourable members of the House will remember that we are using the word 'State' in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is 'Fund'. It is therefore, desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider

*CAD, Vol. VII. 96th November 1948. pp. 653-34.

phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word 'State'. I hope that my Honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

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*(One or two honourable Members rose to speak.)

Mr. Vice-President : You must forgive me if I am unable to meet the wishes of Honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, dealing with the amendments which have been moved, I accept Amendment No. 280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar : General): Will the Honourable Member give his views also about amendments which have not been moved ?

The Honourable Dr. B. R. Ambedkar : I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya : It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar : I cannot help it. I accept the amendment of Mr. Rouf adding the words "place of birth". I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words "In particular" in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh. I am prepared to accept his amendment provided he is prepared to drop the word "kunds" from his amendment.

Shri Guptanath Singh: I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar : Then, among the many amendments which I am sorry I cannot accept. I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My friend Mr. Tahir who moved this amendment referred

*CAD, Vol. VII, 29th November 1948, p.p. 660-64.

particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be successful in achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of us desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability : instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in article 9, I would like to draw his attention to article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary.

With regard to amendment No. 323 moved by Professor K. T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the Scheduled Castes and Scheduled tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, "Well, we are making special provision for the Scheduled Castes". To my mind they can safely say so by taking shelter under the article

if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment.

Then I come to my Friend Mr. Nagappa. He has asked me to explain some of the words which have been used in this article. His first question was whether "shop" included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word ' shop ' does include laundry and shaving place. To define the word 'shop' in the most generic term one can think of is to state that 'shop' is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty clothes of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon.

The Honourable Shri B. G. Kher (Bombay : General) **:** Does it include the offices of a doctor and a lawyer 7

The Honourable Dr. B. R. Ambedkar : Certainly it will include anybody who offers his services. I am using it in a generic sense.

I should like to point out therefore that the word 'shop' used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

The second question put to me was whether 'place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality, local board or taluka board or Provincial Government or village panchayat, nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein.

Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond.

The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Wells, rivers, streams and canals no doubt would not come under article 9 ; but they would certainly be covered by the provisions of article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found.

Shri S. Nagappa : What about the courses of water ?

The Honourable Dr. B. R. Ambedkar : I cannot add anything to the article at this stage. But I have no doubt that any action necessary with regard to rivers and canals could be legitimately and adequately taken under article 11.

Shri R. K. Sidhwa : What about the interpretation of the word 'public' ?

The Honourable Dr. B. R. Ambedkar : My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word 'public' and said that the word 'public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word 'public' is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.

Shri Mahavir Tyagi (united Provinces : General)**:** May I know what is to happen to the amendments which have been declared by you as verbal amendments ? Among them I fear there are some which really aim at making a substantial change in the meaning of the clause or article concerned.

Mr. Vice-President : In that matter I am the sole judge. You have given me discretionary power and I propose to exercise that power in my own way.

Shri Mahavir Tyagi : I want information. I do not dispute your judgment or your right, I only want to know whether the sense of the House will be accommodated in regard to the amendments ruled out or whether such amendments will be considered by the Drafting Committee or some other body ? My suggestion is that you will be doing well the House if you will kindly appoint a small sub-committee which will go into these verbal amendments and find out whether some of them at least aim at effecting a change in the meaning of the clause concerned. I do not dispute what you said. They are out of order because you have ruled them as such. But even commas and fullstops have some value. My only request is that ...

Mr. Vice-President: May I suggest a better way which might appeal to you, a way which is better than the appointment of a sub-committee ? Those who think that their amendments are of some substance may

I am sure due consideration will be shown to them.

Shri Mahavir Tyagi : Now I am satisfied, Sir.

Mr. Mohd. Tahir : As the Honourable Dr. Ambedkar has answered my points to my satisfaction with regard to amendment No. 315,1 ask for leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Now I will put the rest of the amendments to the vote of the House. Dr. Ambedkar has accepted the first one.

[Following amendments were adopted as per suggesting Dr. Ambedkar.]

(1) "That for amendment No. 276 in the List of Amendments, the following be substituted

> 'That the second para, of clause (1) of article 9 be numbered as new clause (1a), and the words 'In particular' in the new use so formed, be deleted.

* * * * *

Mr. Vice-President ; The next one is No. 280 which, I understand Dr. Ambedkar has accepted. The question is :

(2) No- 280—

> "That in article 9, after the word 'sex' wherever it occurs, the words 'place of birth' be inserted."

(3) No- 286—(by Mr. C. Subramaniam).

> "That in sub-clause (a) of clause (1) of article 9. after the words ' restaurants, hotels 'the words' Dharamsalas, Musafirkhanas be inserted."

(4) No. 303—(by Mr. Guptanath Singh).

> "That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words 'wells, tanks' the words 'bathing ghats' be inserted."

(5) No. 314—

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words 'the revenues of the State' the words 'State funds' be substituted."

[Rest of the amendments were negatived.]

Article 9, as amended, was added to the Constitution.

ARTICLE 10

***Mr. Vice-President:** Shall we pass on to the next article, new article 9-A ? The amendments here are in the form of Directive Principles. I disallow them. Then we go to article 10.

Shri T. T. Krishnamachari (Madras : General) **:** I think the idea is to hold this over.

The Honourable Dr. B. R. Ambedkar : I request you to hold this article over.

Mr. Vice-President : Then we may go to the next article, 10-A.

(Amendment No. 369 was not moved.)

ARTICLE 11

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†**The Honourable Dr. B. R. Amedkar :** I cannot accept the amendment of Mr. Naziruddin Ahmad.

Mr. Vice-President : Dr. Ambedkar, do you wish to reply to Mr. Shah's suggestion 7

The Honourable Dr. B. R. Ambedkar : No.

The Vice-President : I now put amendment No. 372 to vote.

The question is :

"That for article 11, the following article be substituted:—

'11. No one shall on account of his religion or caste be treated or regarded as an 'untouchable' ; and its observance in any form may be made punishable by law'."

[This amendment of Mr. Nazaruddin was negatived.]

Article 11 was adopted and added to the Constitution.

Honourable Members : "Mahatma Gandhi ki Jai".

[Six members spoke on this Article. Dr. Ambedkar did not make any speech.]

ARTICLE 11-A AND B

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Mr. Z. H. Lari (United Provinces : Muslim) **:** Mr. Vice-President,

*CAD, Vol. VII, 29th November 1948, pp. 664.

†*Ibid.,* 30th November 1948, p. 669.

I move:

"That after article U the following new article be inserted:-—

'II-A- Imprisonment for debt is abolished.

11-B. Capital punishment except for sedition involving use of violence is abolished'."

Sir, the two clauses are distinct and consequently when considering and adopting them it is not necessary for the House to accept both simultaneously or to reject both. It is open to the House to accept one and not to accept the other or to accept both.

Mr. Vice-President : Why not move that separately

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** I do not accept the amendment.

Mr. Vice-President : I shall put the amendment to vote.

The amendment was negatived.

ARTICLE 10

Mr. Vice President : We can now go back to Article No. 10. The motion before the House is :

That Article 10 form part of the Constitution.

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‡**Shri H. V. Kamath :** On a point of clarification, Sir, may I know from my Honourable Friend, Mr. Alladi Krishnaswami Ayyar whether the words here expressed" any State for the time being specified in the First Schedule" applies to all the four parts of the First Schedule ? The first Schedule consists of four parts. Three parts refer to the States and the last part refers to the Andaman and Nicobar Islands ; and we have already adopted article 1 which states in sub-clause (2) that "the States shall mean the States for the time being specified in Parts I, II and III of the First Schedule. May I know from him whether" any State for the time being specified in the First Schedule "means all the States and territories comprised in all the four parts of the First Schedule ? In that case the language of this amendment will have to be modified. It will have to read" under any State or territory in the first four parts I, II, III and IV of the First Schedule, "and if you want to retain only the word 'State' then it will be 'under any State specified in Parts I, II and III of the First Schedule.'

*CAD, Vol. VII, 30th November 1948, p. 672.

†*Ibid.,* 672.

‡*Ibid.,* 678.

The Honourable Dr. B. R. Ambedkar : It is quite obvious that we have not specified parts. We have merely said 'First Schedule' and First Schedule includes all the States in the First Schedule.

Shri H. V. Kamath : Article 1 says 'the States included for the time being specified in Parts I, II and III of the First Schedule.' The territories comprised in Part IV is not a State according to our Constitution.

The Honourable Dr. B. R. Ambedkar : There should be no attempt to make any distinction at all.

Shri H. V. Kamath : If my point is unanswerable, I have nothing to say.

Shri Alladi Krishnaswami Ayyar : If you only refer to the First Schedule, you will find that Part I refers to the territories known immediately before the commencement of this Constitution as the Governor's Provinces. Part II deals with the territories known immediately before the commencement of this Constitution as the Chief Commissioners' provinces of Delhi, Ajmer-Merwara and so on. Part III deals with Indian States. All these three categories are referred to and described as 'States' in Article 1. Part IV of Schedule 1 are Andamans and Nicobar Islands. These are not States but territories.

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***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I am going to say at the outset, before I deal with the specific questions that have been raised in the course of debate, that I cannot accept amendment No. 334 moved by Mr. Misra ; nor can I accept the two amendments moved by my friend, Mr. Naziruddin Ahmad, Nos. 336 and 337. I am prepared to accept the amendment of Mr. Imam No. 338, as amended by amendment No. 77 moved by Mr. Ananthasaynam Ayyangar. I am also prepared to accept the amendment of Mr. Kapoor, *viz*.. No. 340, as amended by amendments Nos. 81 and 82 moved by my friends Mr. Munshi and Mr. Alladi Krishnaswami Ayyar.

I do not think that I am called upon to say anything with regard to amendments Nos. 334, 336 and 337. Such observations, therefore, as I shall make in the course of my speech will be confined to the question of residence about which there has been so much debate and the use of the word "backward" in clause (3) of article 10. My friend Mr. T. T. Krishnamachari, has twitted the Drafting Committee that the

*CAD, Vol. VII, 30th November 1948, pp. 699-702.

Drafting Committee, prohably in the interests of some members of that Committee, instead of producing a Constitution, have produced a paradise for lawyers. I am not prepared to say that this Constitution will not give rise to questions which will involve legal interpretation or judicial interpretation. In fact, I would like to ask Mr. Krishnamachari if he can point out to me any instance of any Constitution in the world which has not been a paradise for lawyers. I would particularly ask him to refer to the vast storehouse of law reports with regard to the Constitution of the United States, Canada and other countries. I am therefore not ashamed at all if this Constitution hereafter for purposes of interpretation is required to be taken to the Federal Court. That is the fate of every Constitution and every Drafting Committee. I shall therefore not labour that point at all.

Now, with regard to the question of residence. The matter is really very simple and I cannot understand why so intelligent a person as my friend Mr. T. T. Krishnamachari should have failed to understand the basic purpose of that amendment.

Shri T. T. Krishnamachari: For the same reason as my Honourable friend had for omitting to put that word originally in the article.

The Honourable Dr. B. R. Ambedkar : I did not quite follow. I shall explain the purpose of this amendment. (It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument.) At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in

very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, *viz.,* that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification.

With regard to the point raised by my friend, Mr. Kamath, I do not propose to deal with it because it has already been dealt with by Mr. Munshi and also by another friend. They told him why the language as it now stands in the amendment is perfectly in accord with the other provisions of this Constitution.

Now, Sir, to come to the other question which has been agitating the members of this House, *viz.,* the use of the word "backward" in clause (3) of article 10. I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post

or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative—and it ought to be operative in their judgment to its fullest extent—there ought to he no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. If Honourable members will bear these facts in mind—the three principles, we had to reconcile,—they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution ; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of

30 per cent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity ? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If Honourable Members understand this position that we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think Honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word "backward" has been used.

With regard to the minorities, there is a special reference to that in Article 296, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me : "What is a backward community" ? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My Honourable Friend Mr. T. T. Krishnamachari asked me whether tills rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local

Government included in this category of reservations such a large number of seats; I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked : "Who is a reasonable man and who is a prudent man ? These are matters of litigation". Of course, they are matters of litigation, but my Honourable Friend Mr. Krishnamachari will understand that the words "reasonable persons and prudent persons" have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words "a reasonable person and a prudent person "have very well been defined and the court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House.

Mr. Vice-President : I am now going to put the amendments to vote, one by one.

The Honourable Dr. B. R. Ambedkar : I am sorry I forgot to say that I accept amendment No. 342.

[Following amendments were accepted by Dr. Ambedkar and adopted by the House.]

"(i) That in clause (1) of article 10, for the words 'in matters of employment', the words 'in mutters relating to employment or appointment to office' be substituted."

(ii) That in clause (2) of article 10. after the words 'ineligible for any' the words 'employment or ' be inserted."

(iii) "That in clause (2) article 10. after the words 'place of birth' the word 'in India' be added.

(iv) "That in clause (2) of articles 10, after the word 'birth' the word 'residence' be inserted."

"(2a) Nothing in this article shall prevent Parliament from making any laws prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Scheduled or any local or other authority within its territory any requirement as to residence within that State prior to such employment or appointment."

That after clause (2) of article 10, the following new clause be inserted :—

(v) "That in clause (2) of article 10, after the word 'ineligible' the words 'or discriminated against' be inserted."

[Rest eight amendments were negatived.]

Article 10, as amended, was added to the Constitution.

ARTICLE 12

***Shri T. T. Krishnamachari :** Sir, I move :

"That in clause (1) of article 12 after the word "title" the words 'not being a military or academic distinction' be inserted."

Sir, article 12 clause (1) will read, as amended, as follows:

"No title not being a military or academic distinction shall be conferred by the State."

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I accept the amendment moved by my friend Mr. T. T. Krishnamachari.

With regard to the amendment moved by my friend Mr. Naziruddin Ahmad, he wanted the word "accepted" to be substituted by the word "recognised". His argument was, supposing the citizen does accept a title, what is the penal provision in the Constitution which would nullify that act ? My answer to that is very simple : that it would be prefectly open under the Constitution for Parliament under its residuary powers to make a law prescribing what should be done with regard to an individual who does accept a title contrary to the provisions of this article. I should have thought that that was an adequate provision for meeting the case which he has put before the House.

With regard to the second point of Mr. Kamath, if I have understood him correctly, he asked whether this is a justiciable right. My reply to that is very simple : it is not a justiciable right. The non-acceptance of titles is a condition of continued citizenship ; it is not a right, it is a duty imposed upon the individual that if he continues to be the citizen of this country then he must abide by certain conditions, one of the conditions is that he must not accept a title because it would be open for Parliament, when it provides by law as to what should be done to persons who abrogate the provisions of this article, to say that if any person accepts a title contrary to the provisions of article 12 (1) or (2), certain penalties may follow. One of the penalties may be that he may lose the right of citizenship. Therefore, there is really no difficulty in understanding tills provision as it is a condition attached to citizenship by itself it is not a justiciable right.

Shri H. V. Kamath : My point is about recognition of existing titles by the State.

*CAD, Vol. VII, 30th November 1948, p. 704.

†*Ibid.,* pp. 708-09

The Honourable Dr. B. R. Ambedkar : As I said in reply to my friend Mr. Naziruddin Ahmad, it is open for Parliament to take such action as it likes, and one of the actions which Parliament may take is to say that we shall not recognise these titles.

Shri H. V. Kamath : I want Dr. Ambedkar to accept the principle. Parliament can do what it likes later on.

The Honourable Dr. B. R. Ambedkar : Certainly it is just commonsense that if the Constitution says that no person shall accept a title, it will be an obligation upon Parliament to see that no citizen shall commit a breach of that provision.

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***Mr. Vice-President** (Dr. H. C. Mookherjee) **:** We shall try to meet the wishes of the House.

We finished our discussion on Article 12 and Dr. ambedkar gave his reply. I am sorry I cannot accommodate those Members who want to reopen it. I shall now put the different amendments to the vote one after the other.

Mr. Vice-President : The question is :

"That in clause (1) of article 12, after the word 'title' the words 'not being a military or academic distinction' he inserted. "

The motion of Shri Krishnamachari was adopted.

[Rest 4 amendments were negatived.]

Article 12, as amended, was added to the Constitution.

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ARTICLE 13

†Mahboob Ali Baig Sahib Bahdur: ...Anyhow I pose this question to the Chairman of the Drafting Committee whether in these circum stances, *viz.,* where there is in existence a provision in the Constitution itself empowering the legislature or the executive to pass an order or law abridging the rights mentioned in clause (1), the court can go into the merits or demerits of the order or law and declare a certain law invalid or a certain Act as not justified. In my view the court's jurisdiction is ousted by clearly mentioning in the Constitution itself that the State shall have the power to make laws relating to libel, association or assembly in the interest of public order, restrictions on the exercise of ……..

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, if I might interrupt my Honourable Friend, I have understood his point

*CAD, Vol. VII. 1st December 1948, p. 711.

†*Ibid.,* p. 735.

and I appreciate it and I undertake to reply and satisfy him as to what it means. It is therefore unnecessary for him to dilate further on the point.

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***Pandit Thakur Dass Bhargva :** ...Similarly, at present you have the right to assemble peaceably and without arms and you have in 1947 passed a law under which even peaceable assemblage could be bombed without warning from the sky. We have today many provisions which are against this peaceable assembling. Similarly in regard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar : Is it open to my Honourable friend to speak generally on the clauses ?

Mr. Vice-President : That is what I am trying to draw his attention to.

The Honourable Dr. B. R. Ambedkar : This is an abuse of the procedure of the House. I cannot help saying that. When a member speaks on an amendment, he must confine himself to that amendment. He cannot avail himself of this opportunity of rambling over the entire field.

Pandit Thakur Dass Bhargava : I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks and expresses himself is extremely objectionable. Why should he get up and speak in a threatening mood or a domineering tone ?

Mr. Vice-President: Everybody seems to have lost his temper except the Chair (*Laughter*). I had given a warning to Mr. Bhargava and, just now, was about to repeat it when Dr. Ambedkar stood up. I am perfectly certain that he was carried away by his feeling. I do not see any reason why there should be so much feeling aroused. He has been under a strain for days together. I can well understand his position and I hope that the House will allow the matter to rest there.

Now, I hope Mr. Bhargava realises the position.

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†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"that with reference to amendment No. 454....."

Shri H. V. Kamath : On a point of order, Sir, has amendment No. 454 been moved ?

Mr. Vice-President : Please continue.

The Honourable Dr. B. R. Ambedkar :

"with reference to amendment No. 454 of the List of Amendments—

(i) in clause, (3), (4), (5) and (6) of article 13, after the words ' any existing law ' the words ' in so far as it imposes ' be inserted; and

*CAD, Vol. VII, 1st December 1948, p. 738

†*Ibid.,* pp. 740-42

(ii) in clause (6) of article 13, after the words 'in particular' the words 'nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law' be inserted."

Syed Abdur Rouf (Assam : Muslim) **:** On a point of order, Sir, I think that Dr. Ambedkar's amendment cannot be an amendment to amendment No. 454. Amendment No. 454 seeks to delete clauses (2), (3), (4), (5) and (6), whereas Dr. Ambedkar's amendment seeks to insert some words in those clauses and cannot therefore be moved as an amendment to an amendment.

Mr. Vice-President : It seems to me that what Dr. Ambedkar really seeks to do is to retain the original clauses with certain qualifications. Therefore I rule that he is in order.

Shri H. V. Kamath : This will have the effect of negativing the original amendment.

Mr. Vice-President : Kindly take your seat.

The Honourable Dr. B. R. Ambedkar : From the speeches which have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law" occurring in the sub-clauses to article 13, would read "existing law" in so far as it is not inconsistent with the fundamental rights. There is no doubt that that is the way in which the phrase "existing law" in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase "existing law" occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using

the phrase "existing law" in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading "existing law", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to be caused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6) I will read for illustration sub-clause (3) with my amendment.

> "Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order."

I am accepting Mr. Bhargava's amendment and so I will add the word "reasonable" also.

> "Imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Now, the words "in so far as it imposes" to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only if it is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because the word there is different from what occurs in sub-clauses (3), (4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava entered into a great tirade against the Drafting Committee, accusing them of having gone out of their way to preserve existing laws. I do not know what he wants the Drafting Committee to do. Does he want us to say straightaway that all existing laws shall stand abrogated on the day on which the Constitution comes into existence ?

Pandit Thakur Dass Bhargava : Not exactly.

The Honourable Dr. B. R. Ambedkar : What we have said is that the existing law shall stand abrogated in so far as they are inconsistent with the provisions of this Constitution. Surely the administration of this country is dependent upon the continued existence of the laws which are in force today. It would bring down the whole administration to pieces if the existing laws were completely and wholly abrogated.

Now, I take article 307. He said that we have made provisions that the existing laws should be continued unless amended. Now, I should

have thought that a man who understands law ought to be able to realize this fact that after the Constitution comes into existence, the exclusive power of making law in this country belongs to Parliament or to the several local legislatures in their respective spheres. Obviously, if you enunciate the proposition that hereafter no law shall be in operation or shall have any force or sanction, unless it has been enacted by Parliament, what would be the position ? The position would be that all the laws which have been made by the earlier legislature, by the Central Legislative Assembly or the Provincial Legislative Assembly would absolutely fall to pieces, because they would cease to have any sanction, not having been made by the parliament or by the local legislatures, which under this Constitution are the only body which are entitled to make law. It is, therefore, necessary that a provision should exist in the Constitution that any laws which have been already made shall not stand abrogated for the mere reason that they have not been made by Parliament. That is the reason why article 307 has been introduced into this Constitution. I, therefore, submit, Sir, that my amendment which particularises the portion of the existing law which shall continue in operation so far as the Fundamental Rights are concerned, meets the difficulty, which several Honourable Members have felt by reason of the fact that they find it difficult to read article 13 in conjunction with article 8, I, therefore, think that this amendment of mine clarifies the position and hope the House will not rind it difficult to accept it.

[After this clarification several amendments were not moved.]

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****The Honourable Dr. B. R. Ambedkar :*** Sir I move—

"That in clause (4) of article 13, for the words 'the general public' the words 'public order or morality' be substituted."

These words are inappropriate in that clause.

Mr. Vice-President : 477 is identical. 479, 480 and 486 are of similar import.

(Amendments Nos. 479, 480 and 486 were not moved.)

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*CAD, Vol. VII, 1st December 1948, p. 744.

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I move :

"That in clause (5) of article 13. for the word 'aboriginal', the word 'scheduled' he substituted."

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal' at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President : There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of list I was not moved.)

Mr. Vice-President : That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (6) of article 13, for the words 'public order, morality or health', the words 'the general public' be substituted."

The words ' public order, morality or health ' are quite inappropriate in that particular clause.

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†**Shri M. Ananthasayanan Ayyangar :** ...Now, therefore, except the amendments which are acceptable to Dr. Ambedkar, the others should not be accepted. They are objectionable and ought not to find a place in the Constitution.

Shri Satyanarayan Sinha (Bihar: General)**:** I move that the question be now put.

Mr. Vice-President : An enquiry was made of me as to how I have tried to conduct the proceedings of this House. I refused to supply the information at that time, because I thought it might be left to my discretion to explain how I conduct the proceedings. I see that I have not been able to satisfy all the members who desire to speak. At the

*CAD, Vol. VII. 1st December 1948. p. 746.

†*Ibid.,* 2nd December 1948, pp. 779-83.

present moment I have here 25 notes from 25 different gentlemen all anxious to speak. There is no doubt that each one of them will be able to contribute something to the discussion. But the discussion cannot be prolonged indefinitely. This does not take into account those other gentlemen equally competent to give their opinion who stand up and who have denied to themselves the opportunity of sending me notes. I have tried to get the views of the house as a whole. If Honourable Members will kindly go through the list of speakers who have already addressed the House they will find that every province has been represented and every so-called minority from every province has been represented. In my view, in spite of what Pandit L. K. Maitra says Bengalees are a majority. In my view therefore the question has been fully discussed. But, as always, I would like to know whether it is the wish of the House that we should close this discussion.

Honourable Members : Yes, yes;

Mr. Vice-President : Then I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Mr. Vice-President, Sir, among the many amendments that have been moved to this article 13, I propose to accept amendment No. 415, No. 453 as amended by amendment No. 86 of Mr. Munshi, and amendment No. 49 in list I as modified by Mr. Thakur Dass Bhargava's amendment to add the word ' reasonable'.

Mr. Vice-President : Will you kindly tell us how you proposed to accept amendment No. 415 ?

The Honourable Dr. B. R. Ambedkar : The amendment which seeks to remove the words 'subject to the other provisions of this article'.

Mr. Vice-President : And then ?

The Honourable Dr. B. R. Ambedkar : Then I accept No. 453 as modified by amendment No. 86, and amendment No. 49 in List I as modified by the amendment of Pandit Thakur Dass Bhargava which introduces the word 'reasonable'.

Now, Sir, coming to the other amendments and the point raised by the speakers in their speeches in moving those amendments, I find that there are just a few points which call for a reply.

With regard to the general attack on article 13 which has centred on the sub-clauses to clause (1), I think I may say that the House now

will be in a position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article 8, my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgement, the faults which were pointed out by Honourable members when they spoke on this article, and I think the speeches made by my friends, Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore I do not want to add anything to what my friends have said in support of this article. In fact I find considerable difficulty to improve upon the arguments used in their speeches in support of this article.

I will therefore take up the other points. Most of them have also been dealt with by my friend, Mr. Ananthasayanam Ayyangar and if, Sir, you had not called upon me, I would have said that his speech may be taken as my speech, because he has dealt with all the points which I have noted down.

Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the Fundamental Rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Now, with regard to the question of bearing arms about which my friend Mr. Kamath was so terribly excited, I think the position that we have taken is very clear. It is quite true and everyone knows that the Congress Party had been agitating that there should be right to bear arms. Nobody can deny that. That is history. At the same time I think the House should not forget the fact that the circumstances when such resolutions were passed by the Congress no longer exist.

Shri H. V. Kamath : A very handy argument.

The Honourable Dr. B. R. Ambedkar : It is because the British Government had refused to allow Indians to bear arms, not on the ground of peace and order, but on the ground that a subject people should not have the right to bear arms against an alien government so that they could organise themselves to overthrow the Government, and consequently the basic considerations on which these resolutions were passed in my judgment have vanished. Under the present circumstances, I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State.

Shri H. V. Kamath : On a point of clarification, Sir, the proviso is there restricting that right.

The Honourable Dr. B. R. Ambedkar : The proviso does what ? What does the proviso say ? What the proviso can do is to regulate, and the term 'regulation' has been judicially interpreted as prescribing the conditions, but the conditions can never be such as to completely abrogate the right of the citizen to bear arms. Therefore regulation by itself will not prevent a citizen who wants to exercise the right to bear arms from having them. I question very much the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath : If Dr. Ambedkar understands the proviso fully and clearly, he will sec that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar : I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not the right of an individual to bear arms but his duty to bear arms.

(An Honourable Member: *Hear, hear.*) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State. That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath : (rose to interrupt).

Mr. Vice-President: You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient latitude.

The Honourable Dr. B. R. Ambedkar : Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Christianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such tiling exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for ? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discrimi-

nations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that I should also like to point out that all that the State is claiming in his matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other Community in India.

We must all remember—including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well—that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignly in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that that was a question which could have been very properly raised when we were discussing the Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas,— scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as 'partially excluded areas'. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this : In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth

Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal", the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific legal *de jure* connotation, something like the Untouchables, it is a general term. Anybody may include anybody in the term 'untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word 'untouchable' some legal connotation and the only way it was found feasible to do it was to enumerate the communities which in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis ? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law, there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is

a case where a community which has hitherto been treated as an Adibasi Comunity is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area ? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President : I shall now put the amendments which have been moved, which number thirty, to the vote one by one.

[Following amendments were accepted by Dr. Ambedkar and were adopted by the House. Rest 28 amendments were negatived.]

(i) "That in clause (1) of article 13. the words "Subject to the other provisions of this article" he deleted."

(ii) That for clause (2) of article 13, the following he substituted :—

"(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to. or prevent the

State from making any law relating to libel, stander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

(iii) "That with reference to amendment No. 454 of the List of amendments—

(i) in clauses (3), (4), (5) and (6) of article 13. after the words "any existing law" the words "in so far as it imposes" be inserted, and

(ii) in clause (6) of article 13, after the words "in particular" the words "nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law" be inserted."

(iv) "That in clauses (3), (4), (5) and (6) of article 13, before the word "restrictions" the word "resonable " be inserted."

(v) "That in clause (4) of article 13, for the words "the general public" the words "public order or morality" be substituted."

(vi) "That in clause (5) of article 13, for the word "aboriginal" the word "Scheduled" be substituted."

(vii) "That in clause (6) of article 13. for the words "morality or health" the words "the general public" be substituted."

Article 13 was added to the Constitution.

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ARTICLE 14

***Shri T. T. Krishnamachari** (Madras : General) **:** Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one....

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus : 'No person shall be prosecuted and punished for the same offence more than once.' If my Honourable Friend Dr. Ambedkar will accept the addition of the words 'prosecuted and' before the word 'punished' and if you. Sir. and the House will give him permission to do so, it will not merely be a wise tiling to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit.

Mr. Vice-President: Does the House give the permission asked for by Shri T. T. Krishnamachari ?

Honourable Members : Yes.

Mr. Vice-President : Now I will call upon Dr. Ambedkar to move the amendment suggested by Shri T. T. Krishnamachari.

*CAD. Vol. VII. 2nd December, 1948. pp. 795-97.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say that I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word 'punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished."

With regard to amendments Nos. 506 and 509 moved by my friend, Mr. Naziruddin Ahmad .....

Mr. Naziruddin Ahmad : It is No. 510.

The Honourable Dr. B. R. Ambedkar : Anyhow, I have examined the position the whole day yesterday and I am satisfied that no good will be served by accepting these amendments. I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the law of the land. It is perfectly possible that the legislatures of the future may abrogate the provisions specified in his amendment but they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore, prepared to accept his amendment.

With regard to amendment No. 513 moved by my friend, Mr. Kakkan .....

An Honourable Member : It was not moved.

Mr. Vice-President : What about amendments Nos. 505 and 506 ?

The Honourable Dr. B. R. Ambedkar : I have already said that I am not prepared to accept amendment Nos. 506 and 510.

Mr. Vice-President : Have you anything to say about amendment No. 505, the second part of it as modified by amendment No. 92 in List V ? perhaps you have overlooked it. It is in the name of Pandit Thakur Dass Bhargava.

The Honourable Dr. B. R. Ambedkar : I accept the amendment moved by him.

Mr. Vice-President : I am putting the amendments one by one to the vote.

Amendment No. 505 as modified by amendment No. 92 of List V. I understand that Dr. Ambedkar accepts it. The question is:

"That in clause (1) of article 14, for the words ' under the law at the time of the commission 'the words' under the law in force at the tune of the commission ' be substituted. "

The amendment was adopted.

[Two amendments were negatived.]

* * * * *

Mr. Vice-President : Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is : That in article 14, the following be added as clause (4):—

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

I think the 'Ayes' have it.

Shri T. T. Krishnamachari : The Noes have it.

Mr. Vice-President : I will again put it to the vote.

I think the ' Ayes ' have it.

Shri T. T. Krishnamachari : No, Sir, the 'Noes' have it.

Mr. Vice-President : I shall first of all call for a show of hands.

(The Division Bell was rung.)

Shri Mahavir Tyagi (United Provinces : General) : May I proposed that this question might be postponed for the time being and a chance be given for the Members to confer between themselves and arrive at a decision. Even the British House of Commons, sometimes converts itself into a committee to give various parties a chance to confer and arrive at an agreed solution.

Mr. Vice-President : I am prepared to postpone the voting on this amendment provided the House gives me the requisite permission. I would request the House to be calm. This is not the way to come to decisions which must be reached through co-operative effort and through goodwill. Does the House give me the necessary power to postpone voting on this ?

The Honourable Pandit Jawaharlal Nehru : Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members' minds on this point, I think. Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may

proceed with other things. It will be the wish of the House that will prevail of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

Dr. B. V. Keskar (United Provinces : General) : Can it be done after the division bell has rung ?

Mr. Vice-President : I never go by technicalities. I shall continue to use common-sense as long as I am here. I have little knowledge of technicalities, but I have some knowledge of human nature. I know that in the long run it is good sense, it is common-sense, it is goodwill which alone will carry weight. I ask the permission of the House to postpone the voting.

Honourable Members : Yes.

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ARTICLE 16

***The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, what I understood from Mr. Subramaniam, if I have understood him correctly is not that he objects to article 16, but his objection is directed to the place which this article finds. He says that although there may be utility and necessity so far as this article is concerned, it ought not to find a place in the fundamental rights. And his second point, if I have understood him correctly is that as this article is made subject to article 244, article 16 may be completely nullified, and to use his own words, no residue of it might be left if the powers given under article 244 were exercised. I think I am right in thus summarising what he said.

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Suhramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Suhramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian Stales would join the Union only on three subjects-foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent

*CAD, Vol. VII. 3rd December 1948, pp. 802-03.

Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union Parliament. Or to put it briefly and in a different language, they were not prepared to allow trade and commerce to be included as an entry in List No. I. If it was possible for us to include trade and commerce in list I, which means that Parliament will have the executive authority to make laws with regard to trade and commerce throughout India, we would not have found it necessary to bring trade and commerce under article 16, in the fundamental rights. But as that door was blocked, on account of the basic considerations which operated at the beginning of the Constituent Assembly, we had to find some place, for the purpose of uniformity in the matter of trade and commerce throughout India, under some head. Alter exercising a considerable amount of ingenuity, the only method we found of giving effect to the desire of a large majority of our people that trade and commerce should be free throughout India, was to bring under fundamental rights. That is the reason why, awkward as it may seem, we thought that there was no other way left to us, except to bring trade and commerce under fundamental rights. I think that will satisfy my friend Mr. Subramaniam why we gave this place to trade and commerce in the list of fundamental rights, although theoretically, I agree, that the subject is not germane to the subject-matter of fundamental rights.

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244, or has misread that article. Article 244 has a very limited scope. All that it does is to give powers to the provincial legislatures in dealing with inter-State commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported from another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods

manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

Shri C. Subramaniam : The clause says that it shall be lawful for any State to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse... as may be required in the public interests.

The Honourable Dr. B. R. Ambedkar : Yes, but reasonable restrictions do not mean that the restrictions can be such as to altogether destroy the freedom and equality of trade. It does not mean that at all.

Sir, I therefore, submit that the article as it stands is perfectly in order and I commend it to the House.

Article 16 was adopted and added to the Constitution.

ARTICLE 17

***Mr. Vice-President** : Now we come to article 17.

The motion before the House is that article 17 form part of the Constitution.

There are a number of amendments to this article, and they will be gone through now. The first in my list is No. 543. It is a negative one and is therefore ruled out.

There is an amendment to this amendment, that is No. 93 in List V, standing in the name of Shri Ram Chandra Upadhyaya.

(Interruption by Mr. Kamath).

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†**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K. T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word 'devadasis' ! Now

*CAD, Vol. VII, 3rd December 1948. p. 803.

†*Ibid.,* pp. 812-13.

I understand that his arguments for including 'devadasis' have been replied to by other members of the House who have taken part in this debate and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.

With regard to the amendment of my Honourable Friend, Mr. H. V. Kamath, he wants the words 'social and national' in place of the word 'public'. I should have thought that the word 'public' was wide enough to cover both 'national' as well as 'social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that that is the correct attitude to take.

With regard to the amendment of my Honourable Friend Shri Damodar Swamp Seth, it seems to be unnecessary and I, therefore,do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called 'hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.

In this clause, it may be seen that non-payment of compensation could not be a ground of attack ; because the fundamental proposition enunciated in sub-clause (2) is this : that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath : On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that

it consists of two words in place of one ? In that case, I shall be happy if the wording is either 'social' or 'national' in place of 'public'.

The Honourable Dr. B. R. Ambedkar : It is better to use a wider phraseology which includes both.

Shri Rohini Kumar Chaudhuri (Assam : General) **:** May I know, Sir, does the Honourable Member accept amendment No. 548, which deals with prostitution, and which was moved by Giani Gurmukh Singh Musafir ?

The Honourable Dr. B. R. Ambedkar : I understand it was not moved.

Mr. Vice-President : It was not moved.

I shall now put the amendments to vote one by one.

Amendment No. 544 standing in the name of Kazi Syed Karimuddin was negatived.

Amendment No. 545 standing in the name of Shri Damodar Swarup Seth was negatived.

Amendment No. 546 standing in the name of Professor K. T. Shah was also negatived.

Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man was withdrawn.

[Amendment No. 556 standing in the name of Mr. Kamath was negatived.]

Amendment No. 559 standing in the name of Professor K. T. Shah, was accepted by Dr. Ambedkar and was adopted.

"That in clause (2) of article 17. after the words "discrimination on the ground "the word" only "be added."

Article 17, as amended was adopted and added to the Constitution.

ARTICLE 18

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***The Honourable Dr. B. R. Ambedkar** : I do not accept the amendment moved by Mr. Damodar Swarup—No. 564.

The amendment was negatived.

Article 18 was adopted and addded to the Constitution.

*CAD, Vol. VII, 3rd December 1948, p. 815.

ARTICLE 19

***Mr. Vice-President :** Amendment No. 596, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I beg to move :

> "That in clause (2) of article 19. for the word "preclude" the word "prevent" be substituted."

This is only for the purpose of keeping symmetry in the language that we have used in the other articles.

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†The Honourable Shri K. Santhanam : Sir, we have adopted a directive asking the State to endeavour to evolve a uniform civil code, and this particular amendment is a direct negation of that directive. On that ground also, I think this is altogether inappropriate in this connection.

Mr. Vice-President: Would you like to say anything on this matter, Dr. Ambedkar ? I should value your advice about this amendment being in order or not, on account of the reasons put forward by Mr. Santhanam.

The Honourable Dr. B. R. Ambedkar : I was discussing another amendment with Mr. Ranga here and so .....

The Honourable Shri K. Santhanam : Amendment No. 612 about personal law is sought to be moved.

The Honourable Dr. B. R. Ambedkar : This point was disposed of already, when we discussed the Directive Principles, and also when we discussed another amendment the other day.

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‡Mr. Vice-President: I have on my list here 15 amendments, most of which have been moved before the House. I should think that they give the views on this particular article from different angles. We had about seven or eight speakers giving utterance to their views. I think that the article has been sufficiently debated. I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I have nothing to add to the various speakers who have spoken in support of this article. What I have to say is that the only amendment I am prepared to accept is amendment No. 609.

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*CAD, Vol. VII, 6th December 1948, p. 826.

†*Ibid.,* pp.. 829-30.

†*Ibid.,* p. 838.

Shri H. V. Kamath : May I ask whether it will be enough if Dr. Ambedkar says : "I oppose, I have nothing to say". I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate.

Mr. Vice-President : I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments.

Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** Mr. Vice-President, may I say that amendment No. 609 which has been accepted by the Honourable Dr. Ambedkar is a mere verbal amendment 7

Mr. Vice-President : It will be recorded in the proceedings. We shall now consider the amendments one by one.

[Following amendment was accepted by Dr. Ambedkar and was adopted by the House. In all 12 amendments were negatived and one was withdrawn.]

"That in clause (2) of article 19 for the word "preclude" the word "prevent" be substituted."

The amendment was adopted.

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***Mr. Vice-President :** The question is :

"That in sub-claue (b) of clause (2) of article 19 for the words "any class or section "the words" all classes and sections ' he substituted."

Have you accepted it. Dr. Ambedkar 7

The Honourable Dr. B. R. Ambedkar : Yes, Sir.

Mr. Vice-President : The amendment has been accepted by Dr. Ambedkar.

The amendment was adopted.

[Article 19 as amended by Amendments Nos. 596 and 609 was adopted and added to the Constitution.]

ARTICLE 14 *(Continued)*

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†Mr. Vice-President : We shall go back to Article 14. So far as I remember—I am sorry I have mislaid my notes—in article 14 there were a number of amendments which were put to the vote one after the other, and that only two amendments were being considered, when, for reasons already known to the House, we postponed their consideration. One was amendment No. 512 moved by Kazi Syed Karimuddin, and the other was a suggestion—am I right in saying that it was a suggestion made by Mr. T. T. Krishnamachari ? Mr. T. T. Krishnamachari, will you please enlighten me ? Was it a suggestion or was it a short notice amendment ?

*CAD, Vol. VII, 6th December 1948, p. 839.

† *Ibid.,* p. 840.

Shri T. T. Krishnamachari : It was a short notice amendment.

Mr. Vice-President : It was a short notice amendment admitted by me. These two only remained to be put to the vote.

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***Mr. Vice-President :** We come to Mr. Krishnamachari's amendment which was accepted by Dr. Ambedkar.

Shri H. V. Kamath : Is it necessary to say that Dr. Ambedkar has accepted or rejected everytime ?

Mr. Vice-President : Sometimes it is necessary. Not always. I now put the amendment to vote.

The question is :

"That in clause 2 of article 14 after the word 'shall he' the words ' prosecuted and 'be inserted."

The amendment wass adopted.

Article 14, as amended was added to the Constitution.

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ARTICLE 15 *(Contd.)*

†Mr. Vice President (Dr. H. C. Mookherjee)**:** We can now resume general discussion on article 15.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, May I request you to allow this matter to stand over for a little while ?

Mr. Vice-President : Is that the wish of the House ?

Honourable Members : Yes.

ARTICLE 20

Mr. Vice-President : Then we can go to the next article, that is article 20.

The motion before the House is :

"That article 20 form part of the Constitution".

I have got a series of amendments which I shall read over. Amendment No. 613 is disallowed as it has the effect of a negative vote. Nos. 614 and 616 are almost identical ; No. 614 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in the beginning of article 20, the words 'Subject to public order, morality and health' be inserted."

Sir, it was just an omission. Honourable Members will see that these words also govern article 19 ; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights

*CAD, Vol. VII, 6th December 1948, p. 842.

†*Ibid.,* 7th December 1948. p. 859.

in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

Mr. Vice-President : I can put amendment No. 616 to the vote if it is to be pressed. Has any Member anything to say on the matter ?

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(Amendment No. 616 was not moved.)

***Mr. Tajamul Husain :**

"Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes ;"

These are the exact words in the article. I want these words to remain where they are. I do not want these words to be deleted.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is :

"That in the beginning of article 20. the words "Subject to public order, morality and health", be inserted."

The amendment was adopted.

[Four other amendments were negatived.]

Article 20, as amended, was added to the Constitution.

NEW ARTICLE 20-A

†**The Honourable Dr. B. R. Ambedkar:** I do not accept amendment No. 632 or amendment No. 633.

Shri H. J. Khandekar (C. P. and Berar : General) **:** Sir, I want to speak.

Mr. Vice-President : I am afraid it is too late. I shall now put the amendments to the vote.

[Both the following amendments were negatived.]

(1) "That in article 21. after the word "which" the words "wholly or partly" be inserted."

(2) "That in article 21, for the words "the proceeds of which are "the words" on any income which is "be substituted."

Article 21 was added to the Constitution.

ARTICLE 22

†**Mr. Vice-President** : Amendment No. 645 standing in the name of Dr. Ambedkar.

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*CAD, Vol. VII. 7th December 1948, p. 863.

†*Ibid.,* p. 866.

‡*Ibid.,* p. 871.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (1) of article 22, the words "by the State" he omitted."

The object of this amendment is to remove a possibility of doubt that might arise. If the words "by the State" remain in the draft as it now stands, it might be construed that this article permits institutions other than the State to give religious instruction. The underlying principle of this article is that no institution which is maintained wholly out of State funds shall be used for the purpose of religious instruction irrespective of the question whether the religious instruction is given by the Slate or by any other body.

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***Mr. Vice-President :** Much as I would like to accommodate other members, for whose opinions I have great respect, I find we have already had a number of speakers. Twelve amendments have to be put to vote. Nine amendments have been moved and I think six speakers have already spoken. I feel this article has been discussed sufficiently. I now call on Dr. Ambedkar to speak.

Pandit Lakshmi Kanta Maitra (West Bengal : General) **:** Sir, I want to get one or two points cleared. I am not going to make a speech. I want only to get one or two points explained.

Mr. Vice-President : I have already given my ruling. I cannot allow any further speeches, especially as you and I belong lo the same Province.

Pandit Lakshmi Kanta Maitra : Belonging to the same province has nothing lo do with this. I only wanted lo have clarification on one point.

Mr. Vice-President : My decision is final, Panditji. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only amendment No. 661 moved by Mr. Kapoor to omit sub-clause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be

*CAD. Vol. VII. 7th December 1948. pp. 882-86

no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

Now, I take the liberty of saying that the draft as it stands, strikes the mean, which I hope will be acceptable to the House. There are three reasons, in my judgment, which militate against the acceptance of the view advocated by my friend Mr. Ismail, namely that there ought to be no ban on religious instructions, rather that religious instructions should be provided ; and I shall state those reasons very briefly.

The first reason is this. We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community. For instance, if we permitted any particular religious instruction, say, if a school established by a District or Local Board gives religious instructions, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provisions contained in article 21. The District Board would be making a levy on every person residing within the area of that District Board. It would have a general tax and if religious instruction given in the District or Local Board was confined to the children of the majority community, it would be an abuse of article 21, because the Muslim community children or the children of any other community who do not care to attend these religious instructions given in the schools would be none-the-less compelled by the action of the District Local Board to contribute to the District Local Board funds.

The second difficulty is much more real than the first, namely the multiplicity of religions we have in this country. For instance, take a city like Bombay which contains a heterogeneous population believing in different creeds. Suppose for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school

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would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. It one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties ; there would be *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains—even amongst Hindus there would be the Shivites, there would be the Vaishnavites. Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations ? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

The third tiling which I would like to mention in this connection is that unfortunately the religions which prevail in this country are not merely non-social ; so far as their mutual relations are concerned they are anti-social, one religion claiming that its teachings constitute the only right path for salvation, that all other religions are wrong. The Muslims believe that anyone who does not believe in the dogma of Islam is a **Kafir* not entitled to brotherly treatment with the Muslims. The Christians have a similar belief. In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution if these controversies with regard to the truthful character or" any particular religion and the erroneous character of the other were brought into juxtaposition in the school itself. I therefore say that in laying down in article 22 (1) that in State institutions there shall be no religious instruction, we have in my judgment travelled the path of complete safety.

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid ; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We

* *Misprinted in the original as 'Fakir'.*

have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions . . . . . .

Shri H. V. Kamath : On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils—not a school where all communities are mixed but a school run by the community for its own pupils ?

The Honourable Dr. B. R. Ambedkar : If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not. gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.

Therefore, by sub-clause (2) we are really achieving two purposes. One is that we are permitting a community which has established its institutions for the advancement of its religious or its cultural life, to give such instruction in the school. We have also provided that children of other communities who attend that school shall not be compelled to attend such religious instructions which undoubtedly and obviously must be the instruction in the religion of that particular community, unless the parents consent to it. As I say, we have achieved this double purpose and those who want religious instruction to be given are free to establish their institutions and claim aid from the State, give religious instruction, but shall not be in a position to force that religious instruction on other communities. It is therefore not proper to say that by this article we have altogether barred religious instruction. Religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is baaed is this, that the Stale in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.

Pandit Lakshmi Kanta Maitra : May I put the Honourable Member one question 7 There is, for instance, an educational institution wholly managed by the Government, like the Sanskrit College, Calcutta. There the *Vedas* are taught, *Smrithis* are taught, the *Gita* is taught, the

Upanishads are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22 (1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of *Vedas,* or *Smrithis,* or *Shastras,* or *Upanishads* conies within the meaning of a religious instruction ? In that case all these institutions will have to be closed down.

The Honourable Dr. B. R. Ambedkar: Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is therefore quite difficult for me.

Pandit Lakshmi Kanta Maitra : Take for instance the teaching of Gita, Upanishads, the Vedas and things like that in Government Sanskrit Colleges and schools.

The Honourable Dr. B. R. Ambedkar : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that *Paigambar* the Prophet is the last Prophet and so on, in other words, what we call "dogma". A dogma is quite different from study.

Mr. Vice-President : May I interpose for one minute ? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction ; it was regarded as a course in culture.

Pandit Lakshmi Kanta Maitra : My point is this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction ? Expounding Upanishads is not a matter of research.

Mr. Vice-President: It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College.

Shri H. V. Kamath : On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory ?

The Honourable Dr. B. R. Ambedkar : It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school.

Prof. Shibban Lal Saksena : The way in which you have explained the word "religious instruction" should find a place in the Constitution.

The Honourable Dr. B. R. Ambedkar : I think the courts will decide when the matter comes up before them.

Mr. Naziruddin Ahmad : The Honourable Member has proposed to accept the deletion of clause (3). It is an explanatory note. I would ask if its deletion will rule out the application of the principle contained therein even apart from the deletion.

The Honourable Dr. B. R. Ambedkar : Well, the view that I take is this, that clause (3) is really unnecessary. It relates to a school maintained by a community. After school hours, the community may be free to make use of it as it likes. There ought to be no provision at all in the Constitution.

Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not

only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

Mr. Vice-President : I am now putting the amendments to vote one after another.

[In all, 12 amendments were negatived. Only one amendment of Mr. Kapoor as shown below was accepted by Dr. Ambedkar and was adopted.]

The question is :

"That clause (3) of article 22 be omitted."

[Article 22 as amended was adopted and added to the Constitution.]

ARTICLE 22A (New Article)

***Prof. K. T. Shah** : Sir, I beg to move :

"That after article 22, the following new article he inserted :—

'22-A. All privileges, immunities or exemptions of heads of religious organisations shall be abolished'."

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†The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my Honourable Friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or properly of some sort, that is a different matter, but mere dignity cannot be a ground of action it all.

*CAD, Vol. VII, 7th December 1948, p. 8X8.

†*Ibid.* , p. 891.

With regard to the amenities which perhaps some of them enjoy, it is certtainly within the power of the executive and the legislature to withdraw them. It is quite true, as my Honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary.

[The motion of Prof, Shah was negatived.]

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ARTICLE 23 *(Contd.)*

***Mr. Vice-President (Dr. H. C. Mookherjee):** We shall now resume discussion of article 23 to which two amendments have been moved. Amendment No. 677 relates to national language and script and is therefore postponed. Amendments Nos. 678,679, 680 and 681 (1st part) are to be considered together as they are of similar import. I can allow No. 678 to be moved.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move—

> "That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted."

The only change is from and 'to' 'or' and the necessity of the change is so obvious that I do not think it is necessary for me to say anything regarding the same.

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†Mr. Vice-President : Amendment No. 679.

Shri H. V. Kamath (C.P. & Berar: General): I have been forestalled by Dr. Ambedkar. So, I do not move No. 679.

Mr. Vice-President : Do you wish to press No. 680 ?

Mohamed Ismail Sahib (Madras : Muslim) **:** Yes.

Mr. Vice-President : Do you wish that 681 first part should be put to vote ?

Prof. K. T. Shah (Bihar : General) **:** First part is covered by Dr. Ambedkar's amendmednt. But I would like to move the second part.

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*CAD. Vol. VII, 8th December 1948. p. 895.

† *Ibid.,* p. 895.

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***Shri Jaipal Singh** (Bihar : General) **:** Mr. Vice-President, Sir, I have great pleasure in welcoming this article, more so as it has been suitably amended by Dr. Ambedkar, and I hope his amendment will be accepted by the House. Sir, to me this article seems to open a new era for India....

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†Mr. Vice-President : Dr. Ambedkar.

Prof. Shibban Lal Saksena (United Provinces : General) **:** Sir. I have to say something, and

Mr. Vice-President : I cannot allow the discussion to be prolonged any longer, and my decision is final in this matter.

Prof. Shibban Lal Saksena: To allow some people and not to allow others is not proper.

Mr. Vice-President : I know it is considered improper. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, of the amendments which have been moved to article 23, I can accept amendment No. 26 to amendment No. 687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No. 690, also moved by Pandit Thakur Dass Bhargava. Of the other amendments which have been moved I think there are only two that I need reply to, they are, No. 676 by Mr. Lari and amendment No. 714 also by Mr. Lari. I think it would be desirable, if in the course of my reply I separate the questions which have arisen out of these two amendments.

Amendment No. 676 deals with cultural rights of the minorities, while the other amendment. No. 714, raises the question whether a minority should not have the Fundamental Right embodied in the Constitution for receiving education in the primary stage in the mother tongue.

With regard to the first question, my Friend, Mr. Lari, as well as my Friend, Maulana Hasrat Mohani, both of them, charged the Drafting Committee for having altered the original proposition contained in the Fundamental Right as was passed by this House. It is quite true that the language of paragraph 18 of the Fundamental Rights Committee has been altered by the Drafting Committee, but I have no hesitation

*CAD. Vol. VII, 8th December 1948, p. 907.

† *Ibid.* pp. 922-25.

in saying that the Drafting Committee in altering the language had sufficient justification.

The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental Rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term "minority" was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purposes of certain political safeguards such as representation in the Legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from which they have migrated, but they keep their connections. They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to

go back to their province and to get themselves assimilated to the original population to which they belonged. In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution.

I think another thing which has to be borne in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution. That is the reason why we eliminated the word "minority" from the original clause.

But while omitting this word "minority" I think my Friend, Mr. Lari forgot to see that we have very greatly improved upon the protection such as was given in the original article as it stood in the Fundamental Rights. The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. The original article had not given any Fundamental Right to these various communities. It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive, not that the State had no right-to make a law affecting these matters, but that the law shall not be oppressive. Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon the goodwill of the State. The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed.

My Friend, Mr. Lari and the Maulana will therefore see that there has been from their point of view a greater improvement than what was found in the original article. Certainly there has been no deterioration in the position at all as a result of the change made by the Drafting Committee.

Coming to the other question, namely, whether this Constitution should not embody expressly in so many terms, that I he right to receive education in the mother tongue is a Fundamental Right: Let me say one thing and that is that I do not think that there can be any dispute between reasonably-minded people that if primary education is to be of any service and is to be a reality it will have to be given in the mother tongue of the child. Otherwise primary education would be valueless and meaningless. There is no dispute, I am sure, about it and in saying that I do not think it necessary for me to obtain the authority of the Government to which I belong. It is such a universally accepted proposition and it is so reasonable that there cannot be any dispute on the principle of it at all. The question is whether we should incorporate it in the law or in the Constitution. I must frankly say that I find some difficulty in putting this matter into a specific article of the Constitution. It is true, as my Honourable Friend Pandit Kunzru observed, that the difficulty that might be felt in administering such a Fundamental Right is to some extent mitigated or obviated by the amendment moved by my Friend Mr. Karimuddin *viz.,* that such a principle should become operative in the case a substantial number of such students were available. I would like to draw the attention of my friend Mr. Karimuddin that his amendment does not really solve the difficulty, which stands in the way of his accepting the principle. First, who is to determine what is a substantial number ? Let me give an illustration. Supposing the matter is to be left to the Executive, as it must be, and the Executive made a regulation that unless there were 49 per cent of such children seeking education in a primary school, then and then only it will be regarded as a substantial number. Will that satisfy him if such an authority was left with the Executive ? Then supposing you make this matter a justiciable matter, is it undoubtedly would be when you are introducing it as a Fundamental Right and no Fundamental Right is fundamental unless it is justiciable, is it proper, is it desirable that the question whether in any particular school a

substantial number was available or not should be dragged into a court of law, to be determined by the court ? I cannot see any other way out of the difficulty. Either you must leave the interpretation of the word "substantial" to the Executive or to the judiciary and in my judgment neither of the methods would be a safe method to enable the minority to achieve its object. Therefore my submission is that we should be satisfied with the fact that it is such a universal principle that no provincial government can justifiably abrogate it without damage to a considerable part of the population in the matter of its educational rights. Therefore, I submit that the article as amended should be accepted by the House.

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[Following 3 amendments were adopted. Six amendments were negatived.]

(1) "That in clause (1) of article 23, for the words "script and culture" the words "script or culture" he substituted ".

(2) That in clause (3) of article 23, the word "community" wherever it occurs be deleted.

(3) That for clause (2) of article 23, the following be substituted :—

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them" ;
and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A."

[Article 23, as amended was adopted and added to the Constitution.]

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ARTICLE 24

***Shri T. T. Krishnamachari** (Madras : General) **:** It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Yes, Sir, I request that article No. 24 be kept back.

Mr. Vice-President : Is that the wish of the House ?

Hoonourable Members : Yes.

Mr. Z. H. Lari (United Provinces : Muslim) **:** Then what about article 15, Sir?

*CAD, Vol. VII, 9th December 1948, p. 930.

Mr. Vice-President : The consideration of that article has been postponed for the time being.

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ARTICLE 25

***The Honourable Dr. B. R. Ambedkar :** Sir, I do not think that because this article is subject to the provisions of the other articles to which my Honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow .....

Kazi Syed Karimuddin : Then why not postpone this ?

The Honourable Dr. B. R. Ambedkar : No.

Mr. Vice-President : I am going to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

Mr. Vice-President : The question is :

"That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution."

The motion was negatived.

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†Mr. Naziruddin Ahmad : Perhaps there is some mis-print; I do not know. If there is no mis-print it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court

The Honourable Dr. B. R. Ambedkar : See sub-clause (3).

Mr. Naziruddrn Ahmad : That sub-clause empowers some other specified Courts to deal with this subject ; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court....

*CAD, Vol. VII, 9th December 1948, p. 931.

† *Ibid.,* 931.

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Shri H. V. Kamath : ...I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely send or prestige or some such consideration will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

***The Honourable B. R. Ambedkar :** Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

Mr. Naziruddin Ahmad : I desire to move it if that is acceptable to the House.

Mr. Vice-President: Does the House permit Mr. Naziruddin Ahmad to move this ?

Honourable Members : Yes.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (2) of article 25, for the words 'in the nature of the writs of the words 'or writs, including writs in the nature of' be substituted."

Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the Honourable Member is going to accept it. It requires no explanation.

Shri H. V. Kamath : On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

Mr. Naziruddin Ahmad : I heard a rumour that it is going to be accepted.

Mr. Vice-President : Nos. 791 and 792 are disallowed as verbal amendments.

(Amendment No. 793 was not moved.)

Mr. Vice-President : Nos. 794, 795 and 799 are similar and are to be considered together. 794 is allowed to be moved.

The Honourable Dr. B. R. Ambedkar : With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows : *

"That for the existing sub-clause (3) of article 25, the following clause be substituted :

'Without pejudice to the powers conferred on the Supreme Court by clause (1) and (2) of this article. Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.' "

*CAD. Vol. VII, 9th December 1948, p. 933.

The reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

* * * * *

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajamul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogus character. The object of the amendment moved by Mr. Tajamul Husain is to delete altogether sub-clause (4) of this article and Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words 'in case of rebellion or invasion'.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagent demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. Normal peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gives them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed ; you will also find that provision is made for the State to

*CAD, Vol. VII, 9th December 1948, p. 950.

suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir, I will go into details. My Friend Mr. Tajamul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees—of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or hindrance—will also disappear. I cannot understand from where my friend Mr. Tajamul Husain got this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that/ would be suspended under the proclamation issued by the President under emergency are contained in article 13 ; all other articles and the rights guaranteed thereunder would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely outside the provisions contained in article 279.

Shri H. V. Kamath : What about article 280 ?

The Honourable Dr. B. R. Ambedkar : All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

Kazi Syed Karimuddin : Even if war is only threatened ?

The Honourable Dr. B. R. Ambedkar : Certainly. An emergency does not merely arise when war has taken place—the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit, Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned No. 801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by No. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matter should be left quite open for the Supreme Court to evolve such remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear.

> "The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.
>
> The Supreme Court shall have power to issue directions or orders in the nature of the writs of....."

These are quite general and wide terms.

Shri H. V. Kamath : On a point of explanation. Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus :

> "The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*....."

The Honourable Dr. B. R. Ambedkar : Yes, the words "directions and orders" are there.

Shri H. V. Kamath : And "writs".

The Honourable Dr. B. R. Ambedkar : Yes.

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. These writs have

been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apology for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense "prerogative writs", in the other case they are called "writs in action". A writ *of mandamus,* a writ of prohibition, a writ of *certiorari,* can be used or applied for both ; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs ; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of *mandamus,* prohibition or *certiorari* or anything of the kind. But here, so far as this article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceedings against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to

first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a *habeas corpus* proceedings is whether the arrest is lawful and will not enter into the question—at least that is the practice of the Court—of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued in connection with questions of fact and law. They would certainly be investigated by the Courts.

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas corpus* exists in our Criminal Procedure Code. The writ of *Mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentined in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our

Criminal Procedure Code which contains a provision with regard to *habeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of *mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the Legislature. This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majorty.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the Fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that I prefer the British method of dealing with rights. The British method is a peculiar method a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that make a right real. If there is no remedy, there is no right at all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pilous wishes

embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution. Sir, with these words I commend this article to the House.

Shri H. V. Kamath : On a point of clarification, Sir, as we are dealing with justiciable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that "the rights guaranteed by this article shall not be suspended wholly or in part" ..... or any similar set of words which the legal luminaries may choose ?

The Honourable Dr. B. R. Ambedkar : "Shall not be suspended" covers both. It is unnecessary to specify it.

The amendment was negatived.

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Mr. Vice-President : The question is :

Mr. Vice-President : Amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : In view of the remarks made by Dr. Ambedkar on this matter, I do not wish to press it.

The amendment was, by the leave of the Assembly withdrawn.

Mr. Vice-President: Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is :

"That in clause (2) of article 25, for the words "in the nature of the writs of the words 'or writs, including writs in the nature of be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Mahdava Rau and Mr. Saadulla.

The question is :

"That for existing clause (3) of article 25, the following clause be substituted :

'(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2) of this article. Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article'."

The amendment was adopted.

Mr. Vice-President : Amendment No. 43 of List 1 standing in the name of Mr. Sarwate.

Shri V. S. Sarwate : I do not wish to press it.

The amendment was, by leave of the Assembly, withdrawn.

[Four other amendments were negatived.]

Article 25, as amended, was adopted and added to the Constitution.

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ARTICLE 26

***Mr. Vice-President:** We then come to article 26. The motion before the House *is* :

That article 26 form part of the Constitution. Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendments Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

[Amendment of Dr. Ambedkar alone was adopted. Article 26 as amended was adopted and added to the Constitution.]

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ARTICLE 27

†**Mr. Vice-President :** Amendments Nos. 817 and 818 are to be considered together. 817 may be moved ; it stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That for clause (a) of article 27 the following be substituted :

'(a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,' "

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

*CAD, Vol. VII, 9th December 1948, p. 955.

†*Ibid.,* pp. 956-58.

Mr. Vice-President : There is an amendment to this amendment.

The Honourable Dr. B. R. Ambedkar: I have moved it as amended.

Mr. Vice-President : I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 820 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

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Mr. Vice-President: Amendment Nos. 822 and 823 are of similar import. No. 822 can be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for the proviso and explanation to article 27, the following be substituted : 'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.'

'*Explanation*.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution'."

(Amendment Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

Mr. Vice-President : The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President: I hope you will permit me to get the things through before we disperse in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath : I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a) ? Does he intend by his amendment to take away the power which is

sought to be conferred by clause (a) of this article ? ..... I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

The Honourable Dr. B. R. Ambedkar : I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any Fundamental Right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then that power must be exercised only by the Parliament, so that there may be uniformity.

The second tiling is this. If there are already Acts which provide punishments for breaches of Fundamental Rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the tiling. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath : I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly *(Laughter)*.

The Honourable Dr. B. R. Ambedkar : It is quite possible.

Mr. Vice-President : Mr. Kamath, it may be the other way.

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Shri H. V. Kamath : I am addressing you. Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this : I agree Parliament and Parliament alone should have the right. You say here Parliament shall have power to make laws with regard to any of the matters. Further on, you say that parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide

etc., Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters ? Why do you delete that portion ? Why do you retain only the part regarding punishment ? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar: The reason why for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President : I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

[Amendment Nos. 817, 820 and 822 moved by Dr. Ambedkar were adopted Article 27, as amended was adopted and added to the Constitution.]

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ARTICLE 27A

***Mr. Vice-President :** I am well aware that there are many more Members who want to speak and who are fully competent to deal with this subject, but I think that it has been discussed sufficiently. Therefore I shall call upon Dr. Ambedkar. I am sorry to disoblige honourable Members, but I think they will recognise the fact that we have to make a certain amount of progress daily.

Shri Loknath Misra (Orissa : General)**:** But many points have been left untouched.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. Vice-President, Sir, this matter, as Honourable Members will recall, was debated at great length when we discussed one of the articles in

*CAD, Vol. VII, 10th December 1948, pp. 967-68.

the Directive Principles which we have passed. It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle, the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United States ; but if my friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the judiciary completely so as to bring the position in America on the same level with the position as it exists, for instance, of the U. K. In the U. K. there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives or the Senate, if not for all the purposes of the legislautre such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of Legislature receive direct guidance and initiative

from the Members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature.

With regard to the question of separating the Executive from the judiciary, as I said, there is no difference of opinion and that proposition, in my judgment, does not depend at all on the question whether we have a presidential form of government or a parliamentary form of government, because even under the parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

[Prof. Shaha's amendment was negatived.]

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ARTICLE 41

***Mr. Vice-President :** You need not give the reasons for Dr. Ambedkar's action.

Shri H. V. Kamath : I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word 'Rashtrapati' from the article as it appears in the Draft Constitution.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the

*CAD, Vol. VII, 10th December 1948, pp. 973-74.

language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word "Rashtrapati" which is included in the brackets after the word President, in paragraph 1 of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word "Rashtrapati" or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the Constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word "Rashtrapati" to be adopted by the members of those committees, as the word "Rashtrapati" was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term "Rashtrapati" has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word "Rashtrapati" is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says :—

"Hind ka ek President hoga....."

The word "Rashtrapati" is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is w]ckd (PRADHAN). There is no "Rashtrapati" there either.

Shri H. V. Kamath : But, Sir, the point I raised was that the article as adopted by this House had word "Rashtrapati" incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

The Honourable Dr. B. R. Ambedkar: And I am just now informed that in the Urdu Draft, the word used is "Sardar" (*Laughter*).

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word "Chief Executive and the Head of the State". I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the parliamentary form of government. In the United States undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers 7 That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such

consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

Mr. Vice-President: I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name of Prof. K. T. Shah.

The motion was negatived.

Article 41 was adopted and added to the Constitution.

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ARTICLE 42

***Shri Alladi Krishnaswami Ayyar** (Madras : General) : Mr. Vice-President, Sir, Prof. Shah's amendment, if it meets with the acceptance of the House, would mean that the House, for the reasons which Prof. Shah has assigned, is going back upon the decision reached by various Committees of this House as well as by the Constituent Assembly after considerable deliberation on previous occasions....

* * * * *

...An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different parts of the Governmental system. That is the main object of a Constitution. These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type. It is unnecessary to grow eloquent over the Cabinet system. In the terms in which Bagehot has put it, it is a hyphen between the Legislature and the Executive. In our country under modern conditions, it is necessary that there should be a close union between the Legislature and the Executive in the early stages of the democratic working of the machinery. It is for these reasons that the Union Constitution Committee and this Assembly have all adopted what may be called, the Cabinet System of Government, the Presidential system has worked splendidly in America due to historic reasons. The President no doubt certainly commands very great respect but it is not merely due to the Presidential

*CAD. Vol. VII, 10th December 1948, p. 985.

system but also to the way in which America has built up her riches. These are the reasons for which I would support the Constitution as it is and oppose the amendment of Prof. Shah.

The Honourable Dr. B. R. Ambedkar : I am sorry I cannot accept any of the amendments that have been moved. So far as the general discussion of the clause is concerned, I do not think I can usefully add anything to what my friends Mr. Munshi and Shri Alladi Krishnaswamy Ayyar have said.

Mr. Vice-Presient : I am putting the amendments one by one to vote.

All 5 amendments were negatived.

[Article 42 was added to the Constitution.}

ARTICLE 43

***Mr. Vice-President** : I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Yes, Sir.

Mr. Vice-President : Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the Honourable Member is not in the House.

I disallow, as merely verbal, amendments Nos. 1065 and 1066.

Shri S. Nagappa (Madras : General) **:** I do not move amendment No. 1069, Sir.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I move :

> "That to article 43 the following explanation be added :—
>
> "Explanation.—In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bi-cameral. the Lower House of the Legislature'."

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Member of the Upper Chamber to participate in the election of the President. That is not our intention.

*CAD, Vol. VII, 10th December 1948, p. 994.

We desire that only Members who are elected by popular vote shall be entitled (o take part in the election of the President. Hence this amendment.

Mr. Vice-President : Mr. Mohd. Tahir may now move his amendment No. 23 to this amendment.

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***The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgment, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228, 163, 637. The total population of the States conies to 88, 808, 434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise, the population that would be entitled to take part in the election of the President would be about 50 per cent of the total population, the electorate will consist of 158.5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand—I speak subject to correction,—is about 75 millions. I think if honourable Members will bear in mind the figure which I have given ; namely, 158.5 million, they would realise the impossibility of an election in which 158.5 millions of people would have to take part. The size of the electorate, therefore, in my judgement forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158.5 millions

*CAD, Vol. VII, 13th December 1948, pp. 997-08.

to come to the polls and to record the voting ? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and may be open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery therefore, will have to be entirely supplied from the Government administrative machinery. Is it possible either for the Government of India or for the State Governments to spare officials sufficient enough to manage the election in which 158.5 millions would be taking part? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormousness of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union ? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses, I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

Our proposals in the Draft Constitution, in my judgment, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The Lower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Lower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

Mr. Vice-President : I shall now put the amendments to vote, one by one....

In all 5 amendments were negatived.

Following amendments were adopted :—

"That in clause (a) of article 43, for the words 'the members' the words ' the elected members ' be substituted."

Amendment No. 1070 standing in the name of Dr. Ambedkar.

"That to article 43, the following explanation be added :— "Explanation.—In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bi-cameral, the Lower House of he Legislature."

Article 43, as amended, was adopted and added to the Constitution.

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ARTICLE 15

***Mr. Vice-President :** With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now ; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear ? If no understanding has been arrived at, I would ask you to reply.

*CAD, Vol. VII, 13th December 1948. pp. 999-101.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words "procedure according to law" and the substitution of the words "due process".

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view says that "due process of law" must be there in this article ; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly "due process" involves.

The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal tiling that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The 'due process' clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this. We have no doubt given the judiciary the power to

examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this : that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase 'due process'. Another view is this : that it is not possible to trust the legislature ; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle ? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

Mr. Vice-President : I shall now put the amendments one by one to vote.

[In all five amendments were negatived and one was withdrawn. No amendment was adopted. Article 15 was adopted and added to the Constitution.]

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ARTICLE 44

***Mr. Vice-President :** We shall now take up article 44. The motion is : The article 44 form part of the Constitution. I am going to call over the amendments one by one.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :

Sir, I move—

> "That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted."

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses (a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Lower House of each State Legislature and by elected Members of both Houses of Parliament—the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the different classes of States. In the case of States in Part I of the First Schedule, article 149(3)fixes the scale of representation—one representative for every one lakh of population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every 10,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the Slate Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that State by the total number of elected members of the Legislature of that State ; and to divide the

*CAD. Vol. VII. 13th December 1948, pp. 1001-03.

quotient so obtained by 1,000 and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause (2).

I now come to the amendment to sub-clause (c) which I have moved. With regard to the votes cast by members of Parliament, we are confronted by the same problem, namely, the disparity in the electoral units and consequent disparity in the value of the votes cast by them. This disparity also arises from the same causes. In the first place, the Council of States being elected by the State Legislature reflects the same disparity which exists between States in Part I and States in Part III. In the second place, there is the same disparity in the ratio of seats to population as between States in Part I and Part III in the election of members of Parliament.

There are two ways of achieving uniformity in the voting by members of Parliament. One is to divide the total number of votes capable of being cast by members of all the State Legislatures by the total number of members of all the State Legislatures and the quotient will be the number of votes which each member will be entitled to cast. The other method is to divide the total number of votes capable of being cast by members of the Legislatures of all the States by the total number of elected members of both Houses of Parliament. The first method is set out in sub-clause (c) as it stands. The second method is embodied in the amendment to sub-clause (c) which I have moved. The difference between the two methods lies in this. In the first method all members of the electoral college taking part in the election of the President are treated on the same footing in the matter of valuation of their votes. According to the second method the members of Parliament are given equal strength in the matter of voting as the members of the State Legislautres will have. It is felt that members of Parliament should have a better voice than what sub-clause (c) as it stands does. Hence the amendment.

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ARTICLE 44 *(Could.)*

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I accept the amendment No. 25 of List 1 to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir in the course of the general debate, two

*CAD, Vol. VII. 13th December 1948. pp. 1016-18.

questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census viz., of 1941. I am sure there is a great deal of force in what has been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census ; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U.P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

I have no doubt about it that the Government will pay attention to the various arguments that have been made in favour of having a true census of the people before the elections are undertaken. If I may say so, one of the reasons which persuaded me to accept the amendment of my friend Mr. Naziruddin Ahmad is that he used the word 'latest' in preference to the word 'last'. I thought that the word ' last' had a sort of a local colour in the sense that the last census may mean the periodical census which is taken every ten years ; and the 'latest'* census means the census taken before any operation of election is started.

Mr. Naziruddin Ahmad : I did not use those words. I said the last preceding census.

The Honourable Dr. B. R. Ambedkar : Anyhow, I did not pay much attention to what he said. But that certainly is my idea, that this clause shall not prevent the Government from having a new census before proceeding to have elections for the new legislature. I think that should satisfy most Members who have an apprehension on this point.

**Misprinted as 'last' in the debates.*

Shri Mahavir Tyagi : May I take it that you give an assurance that such a census will be taken ?

The Honourable Dr. B. R. Ambedkar : I cannot possibly give an assurance. But no government will overlook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There has been a great deal of debate, as Honourable Members know, over the question of weightage, and we know that weightage has been disallowed. If we now have the elections and allow them to take place and the seats to be assigned on the existing basis of population, when as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weightage, undoubtedly, government will have to see that the census is a proper census.

Pandit Lakshmi Kanta Maitra : I want to know whether the Honourable Member means that no election under the new Constitution should be held unless this census was taken.

Honourable Dr. B. R. Ambedkar : Well, it seems to me only a natural conclusion, because the seals for the elections cannot be assigned unless the populations of the various communities are ascertained. Therefore, that seems to me the logical conclusion, and a new census will be inevitable.

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 per cent, he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any voice in the election of the President. Obviously no Member of the House would like the President to be elected by a hare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities

will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the Constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

Mr. Naziruddin Ahmad : There is to be transferability. How can there be proportional representation when there is only one man to be elected ?

The Honourable Dr. B. R. Ambedkar : I really cannot go into this question in detail. To do so I will have to open a class and lecture on the subject ; but I cannot undertake that task at this stage. However, it is well-known and everybody knows how the system works.

Mr. Vice-President: These interruptions show that some Members are not aware of the true nature of proportional representations. You need not pay attention to these interruptions.

Maulana Hasrat Mohani: What are you going to do if there is only one candidate ?

The Honourable Dr. B. R. Ambedkar : If there is only one candidate, he will be elected unanimously (Laughter), and no question of majority or minority arises at all.

The other question asked by Mr. Tyagi was whether there was any procedure for eliminating candidates.

Shri Mahavir Tyagi : On a point of information, Sir.

The Honourable Dr. B. R. Ambedkar : No. I cannot yield. I am answering your point. Your point was whether there was a process of elimination. The point before me is that I want that the election of the President or the General representation involves elimination. Otherwise it has no meaning. The only thing that we have done is that instead of having several proportional representations, we have provided one single proportional represenation, in which every candidate at the

bottom will be eliminated, until we reach one man who gets what is called a "quota".

Shri Mahavir Tyagi: But in the Parliament the system of alternative votes is adopted.

The Honourable Dr. B. R. Ambedkar : Alternative is only another name for proportional.

Sir, I have nothing further to say on this point.

Shri Mahavir Tyagi : Sir, I want to know

Mr. Vice-President : Mr. Tyagi, my difficulty is I cannot compel the Chairman of the Drafting Committee to answer your questions. Neither can I compel him to clarify your doubts.

I am going to put these amendments, one by one to vote.

I put amendment No. 1075 to vote. (This was moved by Dr. Ambedkar).

[Following two amendments were adopted and two others were negatived.]

(1) That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted.

Following amendment moved by Mr. Naziruddin Ahmad was accepted by Dr. Ambedkar.)

(2) That for the Explanation to article 44, the following Explanation be substituted :

> "Explanation.—In this article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published."

Article 44, as amended, was adopted and added to the Constitution.

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ARTICLE 45

***Shri T. T. Krishnamachari :** Sir, the Honourable Member's amendment is substantially the same as the article, and deals only with the substantive part of the clause and not with the proviso. Is there any object in the Honourable Member moving his amendment ?

Mr. Mohd. Tahir : There is a difference in the meaning of the amendment and the article, and I shall explain how.

The Honourable Dr. B. R. Ambedkar : It is not an amendment at all : it is merely a transposition of the words. There is no difference at all.

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*CAD, Vol. VII, 13th December 1948, p. 1019.

***Mr. Vice-President :** Amendment No. 1086 is disallowed as it is a verbal amendment.

Amendments Nos. 1087 and 1088 are identical. Dr. Ambedkar may move No. 1087.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That in clause (a) of the proviso to article 45, for the word "resignation" the word "writing" be substituted.

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†Mr. Vice-President : As no Member has desired to speak on the general discussion of this article, I propose to ask Dr. Ambedkar to reply to the debate. I have received a slip requesting for an opportunity to speak just now. It has come too late.

The Honourable Dr. B. R. Ambedkar : Sir, the only amendment that I accept is No. 1090 as amended by Mr. Gupte's amendment. The others, I am sorry, I cannot accept. There has been no point raised by any Member which requires any explanation.

Mr. Vice-President : I am going to put the amendments to vote.

[In all five amendments were negatived as they were not accepted by Dr. Ambedkar. Only two amendments as shown below were adopted.]

Mr. Vice-President : Now, the question is—

That in clause (a) of the proviso to article 45 for the word 'resignation' the word 'writing' be substituted.

[This amendment moved by Dr. Ambedkar was adopted.]

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Mr. Vice-President : Now I shall put amendment No. 1090 as modified by amendment No. 26(A) standing in the name of Shri B. M. Gupte to the vote of the House.

The question is :

That—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words "Chairman of the Council of States and the Speaker of the House of the People" the word 'Vice-President' be substituted.

(3) In the said article as re-numbered add the following clause :—

"(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

The amendment was adopted.

Article 45, as amended, was adopted and added to the Constitution.

*CAD, Vol. VII, 13th December 1948. pp. 1019-20.

† *Ibid.,* p. 1022.

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ARTICLE 46

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I am prepared to accept the amendment of Mr. Sharma, i.e., No. 1098, for the deletion of the words "once, but only once".

With regard to Mr. Kamath's amendment, I think the proper time when this matter could be discussed will be when the issue as to the qualifications of the person standing for Presidentship is raised.

To Mr. Tyagi I may say that in view of the deletion of the words "once, but only once", his fears about the Vice-President are groundless.

Mr. Vice-President : I shall now put the amendments one by one to the vote. Amendment No. 1098. The question is :

"That in article 46 the words 'one, hut only once' be deleted."

The amendment was adopted.

Mr. Vice-President : Then amendment No. 1100.

Shri H. V. Kamath : In view of Dr. Ambedkar's statement, I do not want to press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Then Mr. Tyagi's amendment. It does not arise after Dr. Ambedkar's speech, but some *pandit* of technicalities *might* say that I did not put it to the vote. So I want to know if Mr. Tyagi withdraws it or not.

Shri Mahavir Tyagi : Sir, I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is :

That article 46, as amended, form part of the Constitution.

The motion was adopted.

Article 46, as amended, was added to the Constitution.

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*CAD, Vol. VII, 13th December 1948. p. 1024.

ARTICLE 47

***Mr. Vice-President :** Amendment No. 1109, Verbal ; disallowed. Amendments numbers 1110 to 1112 are of similar import. The first of these may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : (Bombay : General): Mr. Vice-President, Sir, I move :

> "That in clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

Sir, this amendment is merely intended to improve the language of the draft.

Mr. Vice-President : Amendment No. 1111. Should that be put to the vote?

Shri H. V. Kamath (C. P. & Berar : General) **:** Dr. Ambedkar has stolen a march over me; this does not arise.

Mr. Vice-President : Amendment No. 1112.

Shri Mihir Lal Chattopadhyay (West Bengal : General) **:** That is already covered, Sir.

(Amendment No. 1113 was not moved.)

Mr. Vice-President : Amendment numbers 1114, 1115 and 1116 are verbal and are disallowed.

Amendment No. 1117, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

> "That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted :—
>
> "(a) he is the Governor of any State for the time being specified in Part I of the First Scheduled or is a minister either for India or for any such State ; or"

The object of this amendment is to remove a disqualification that might arise on account of the fact that a Governor of a State or a Minister is holding an office of profit under the Crown. It is desirable that the Governor of a State as well as a Minister both at the Centre and in the States should be permitted to stand for election and the rule of office of profit under the Crown should not stand in their way.

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*CAD, Vol. VII, 27th December 1948, p. 1027.

***Mr. Vice-President:** Dr. Ambedkar.

Shri Syamanadan Sahaya (Bihar: General)**:** Sir, I have

Mr. Vice-President: I have called Dr. Ambedkar, I am sorry. But have you any amendment ?

Shri Syamanadan Sahaya : No, I have no amendment, but

Mr. Vice-President: If you had come to the front, you could have caught my eyes, because in that direction there is a bad glare.

Shri R. K. Sidhwa (C. P. & Berar : General)**:** But, Sir, we have not had adequate discussion of this article. Only one member has spoken.

The Honourable Dr. B. R. Ambedkar: If they want further discussion, I have no objection.

Mr. Vice-President: Dr. Ambedkar has been good enough to say he does not mind if other Members also speak. Will Shri Syamanandan Sahaya please come to the mike ?

Shri R. K. Sidhwa: Sir .....

Mr. Vice-President: Mr. Sidhwa will always have the last word. I shall give him the last word.

Shri Syamanandan Sahaya : Mr. Vice-President, Sir, I am here to support the amendment which has been moved by Prof. K. T. Shah.

The Honourable Dr. B. R. Ambedkar : Which amendment of Prof. Shah ?

Shri Syamanandan Sahaya: Amendment No. 1124 which reads like this.

> 'provided that any such Minister shall, before offering himself as candidate for such election, resign his office '.

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†The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I regret that I am unable to accept any of the amendments which have been moved by my honourable Friend, Prof. K. T. Shah. There are three amendments which have been moved by Prof. K. T. Shah. One of them relates to the Minister as a candidate for the Presidency and the other two amendments relate to the President. I propose to divide my observations in reply to his speeches on the three amendments into two parts. In the first part I propose to devote myself to his amendment relating to the Minister.

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*CAD, Vol. VII, 27th December 1948, p. 1031.

† *Ibid.,* pp. 1034-37.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems to me that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to be very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time when the new Parliament assembles there can be no Ministers at all in charge of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament ? Are we to hand over the administration to the bureaucrats or the heads of the administratiave departments to carry on until the new Parliament is elected ? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term 7 It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit.....*

Shri L. Krishnaswami Bharathi (Madras : General)**:** It does not refer to all Ministers : it only refers to one minister.

Shri Mahavir Tyagi (United Provinces : General)**:** And to Deputy Minister also.

The Honourable Dr. B. R. Ambedkar : Supposing every Minister wants to contest the election and therefore every Minister will have to resign.

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers

*Dots in the original debates indicate interruption.

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exercise or might exercise on the elections the draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

Coming to his amendments which deal with the President, his first amendment No. 1108 sets out certain disqualifications such us conviction for treason, any offence against the State or any violation of the Constitution, etc. The reason why, for instance, we have not specifically mentioned in this particular article under discussion these disqualifications, will be obvious if the Members recall that we have made other provisions which would have the same object which Prof. Shah has in his mind. In this connection I would like to draw the attention of the House to sub-clause (*c*) of article 48 which requires that "the President shall be a person who shall be qualified for election to Parliament". Now the qualifications for election to Parliament are laid down in article 83. Sub-clause (*e*) of article 83 leaves it to the Parliament to add any disqualifications which Parliament may think it necessary or desirable to add. It is therefore possible that the Parliament when it exercises the powers which are given to it under sub-clause (*e*) of article 83 may think it desirable to include in the list of disqualifications (it is empowered to add to those already enumerated under article 83) some of the propositions which Prof. K. T. Shah has enunciated in his amendment. I therefore submit that, although this particular clause does not refer to the disqualifications mentioned by Professor Shah, it is quite possible and open to Parliament to add them by any law that it may make in sub-clause (*e*) of 83.

Shri H. V. Kamath : On a point of clarification, Mr. Vice-President, if matters like 'unsound mind' and 'undischarged insolvent' are found important enough to be embodied in the article itself, what is the point

in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself?

The Honourable Dr. B. R. Ambedkar : I do not know. It is a mere matter of logic. It is perfectly possible to say that every disqualification should be laid down here. It is perfectly possible to say that some essential things may be laid down here and the others left to the Parliament. I cannot see any inconsistency in that at all.

Now coming to the last amendment of Professor Shah, No. 1125, I think a careful perusal of the language he has used is very essential. What the Professor wants is that every person who has to be a President shall, before assuming office, divest himself of his interest, right, title, etc. in any business or concern which is being sponsored by Government or carried on by Government either itself or through any agency, and secondly that the Government should buy that interest from the President. In regard to this, the first thing that strikes me is that this is one of the most novel propositions that I have ever seen. I do not remember that there is any Constitution anywhere in the world which lays down any such condition. I should have thought that if any such condition was necessary it is in the Constitution of the United States where the President has got an opportunity of exercising administrative control, and administrative discretion and therefore the greatest opportunity of personal aggrandisement exists there. And yet, the Constitution of the United States is absolutely silent about any such condition at all. Professor Shah no doubt has tabled his amendment because he looks upon it as a merely consequential amendment to the original proposition which he had enunciated in the form of his amendment, namely, that the President should have the same position as that of the President of the United States. But our Constitution has completely departed from the position which has been assigned to the President of the United States. As I have stated over and over again, our President is merely a nominal figurehead. He has no discretion ; he has no powers of administration at all. Therefore, so far as our President is concerned, this provision is absolutely unnecessary. If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it

is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

The third question that arises—I think it is a very concrete question—is this. Supposing we laid down any such condition ; is it possible in the circumstances in which we are living, to obtain any candidate who would offer himself for the Presidentship and subject himself to the conditions which have been laid down by Professor Shah ? I doubt very much whether even Professor Shah would offer himself to be President of the Indian Union if these conditions are laid down.

Prof. K. T. Shah : It is not my custom to interrupt speakers at all. But may I give him this categoric assurance that as far I myself am concerned, he can rest assured that there will be complete fulfilment of these conditions. (Laughter).

The Honourable Dr. B. R. Ambedkar : I am glad. But this country could not carry on under the assumption that Professor Shah would be the only candidate who would offer himself for Presidentship. (Laughter) Safety lies in multiplicity of candidates. Therefore we have to consider whether, from a practical point of view, we should have a sufficient number of candidates offering themselves for this particular post. And I have not the least doubt about it that, notwithstanding the very virtuous character of this amendment we should practically be suspending this particular provision from the Constitution if we accept this amendment.

For these reasons I do not accept any of the amendments.

Shri H. V. Kamath : Is Dr. Ambedkar opposed even to the disclosure of the candidate's interest or share ? Is he opposed even to a declaration like that ?

The Honourable Dr. B. R. Ambedkar : But that is not the amendment.

Shri H. V. Kamat: That is part of the amendment.

The Honourable Dr. B. R. Ambedkar: But that is not the amendment.

Mr. Vice-President: I will now put the amendments to vote one by one.

[Following two amendments were adopted ; three amendments were negatived.]

Mr. Vice-President: The question is :

"That ill clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit he substituted".

Mr. Vice-President: The question is :

That for sub-clause (a) of Explanation to clause (2) of article 47, the following he substituted :

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or'."

Article 47, as amended, was adopted and added to the Constitution.

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ARTICLE 47-A

***Mr. Tajamul Hussain :** ..... Now. Sir, in my opinion, this is a fair amendment but I am afraid that this amendment will not be accepted by the Honourable Dr. Ambedkar. Professor Shah comes forward with beautiful amendments but they are all lost because the honourable Member in charge of the Draft Constitution is not in favour of them. Therefore, with your permission, I want to move a verbal amendment to this.

Mr. Vice-President: I cannot allow you to do that. In that case other people would also come forward with verbal amendments. You may make a suggestion for the acceptance of Dr. Ambedkar.

Mr. Tajamul Hussain : My suggestion is this : Mr. Shah's amendment does not say that when a person is elected President he should declare and divest himself of all his personal property. He only says that he should divest himself of his rights, shares or interests in any concern aided or supported by government and that such rights, etc. should be taken over and held in trust for him by the Government of India. I say that as it would come to the Government of India, I thought that Dr. Ambedkar would accept it. If, Dr. Ambedkar as the Law Minister of the Government of India is not going to accept it, then instead of the 'Government of India', let it go to the President's wife and children. That is a very simple matter .....

I support the amendment and I move my oral amendment.

Mr. Vice-President : There is no amendment to be moved.

The Honourable Dr. B.R. Ambedkar : Sir, I have nothing to say.

[Amendment of Prof. K. T. Shah was put to vote but was negatived by the House.]

*CAD. Vol. VII. 27th December 1948, p. 1040

ARTICLE 48

***Mr. Vice-President :** On going through the amendments one by one. I find that amendments Nos. 1127, 1128 and 1130 are of similar import. Amendment No. 1130 seems to be the most comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move:

"That in clause (1) of article 48 :—

'(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted ;

(b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted ;

(c) for the words 'in Parliament of such Legislature, as the case may be,' the words 'in that House 'be substituted'."

There was some defect in the original language and we have tried to improve it.

Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** Mr. Vice-President, we have already decided by accepting certain rules that amendments which are intended to beautify the language of an article will not be allowed. Improving the language is not now one of the objectives of an amendment. Before the amendment was moved, it looked like an imposing amendment, but Dr. Ambedkar has clearly admitted that it was intended merely to improve the language of the article. In that view, although it has been moved, it need not be put to the vote.

Mr. Vice-President : Certain powers have been given to the Chair and the Chair is going to exercise them in the way which seems best.

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†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

Sir, this amendment is just for the sake of uniformity.

Mr. Vice-President : Amendment No. 1134. Do you want me to put this lo the vote ?

Shri H. V. Kamath : I have been forestalled by Dr. Ambedkar; But I would like to move amendment No. 1135.

Mr. Vice-President : We have now only come up to amendment No. 1134. Amendment No. 1135. You can move it.

*CAD, Vol. VII. 27th December 1948, p. 1040.

†*Ibid* p. 1042.

Shri H. V. Kamath : I move, Sir,

"That in clause (3) of article 4X, the words the President shall have an official residence and 'he deleted."

That is to say, the clause will read thus, if the amendment is accepted.

"There shall be paid to the President such emoluments and allowances, etc. etc……."

In moving this amendment, Sir, I seek a little light from Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Which amendment ?

Shri H. V. Kamath : Amendment No. 1135. My purpose in moving this amendment before the House is to request Dr. Ambedkar to throw a little light upon the necessity for incorporating such an insignificant, such a minor detail in our Constitution....

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***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I regret I cannot accept the amendments which have been moved. Professor Shah's amendment No. 1138 seems to be somewhat superfluous. It provides that the President shall be given Secretariat assistance. There is no doubt about it that it will be done whether there is any provision in the Constitution or not.

With regard to his second amendment No. 1140 prescribing that a pension be given to the President on his retirement, I find that while I am agreeable to the sentiment that he has expressed that persons who serve the public by becoming members of Parliament undergo a great deal of personal sacrifice and that it is desirable that they should not be left unprovided for towards the end of their lives, it seems rather difficult to accept this particular armendment also. According to him, every person who becomes President and serves his term of office, which is 5 years, shall, at the end of 5 years, be entitled lo a pension. The second difficulty is that according to his amendment his pension shall not be altered during his life-time. Now supposing for instance one person who has been a President and has filled his full terms of years and has obtained a pension under the amendment of Professor Shah, suppose that he is again elected to be the President, what is the position ? The position is that he continues to get his salary as the President in addition to that he will also be entitled to his pension.

*CAD, Vol. VII, 27th December 1948, pp. 1044-46.

We would not be in a position even to reduce the pension in order to bring it down to his salary. Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt about it that our future Parliament will bear this fact in mind.

Then with regard to the question raised by Professor Kamath about residential……..*

Shri H. V. Kamath : Sir, I am not Professor Kamath.

The Honourable Dr. B. R. Ambedkar : But he is quite entitled to be called Professor because he speaks so often. (*Laughter*.)

Shri H. V. Kamath : God forbid I should ever become a professor, (*Laughter*.)

The Honourable Dr. B. R. Ambedkar : Well, my friend Mr. Kamath asked me to explain why we have included this provision here, with regard to the official residence of the President, and he also twitted me on the fact that I was burdening the Constitution by mentioning it and other small minutiae. It might be though that this is a small matter and might not have been included in the Constitution. But the question I would like to ask Mr. Kamath is this. Does he or does he not intend that the President should have an official residence and that Parliament should make provision for it ? And is there very much of a wrong if the proposition was stated in the Constitution itself? If the intention is that…….

Shri H. V. Kamath : Sir, may I know whether the Prime Minister will or will not have an official residence 7

The Honourable Dr. B. R. Ambedkar : Yes, this is merely a matter of logic. I want to know if he does or does not support the proposition that the President should have an official residence. If he accepts that proposition, then it *seems* to me a matter of small import whether a provision is made in the Constitutiom itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government

*Dots in the original debates indicate interruption.

of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down ; and we have merely followed the existing practice in incorporating this particular provision in the Constitution ; and I do not think we have done any very great violence either to good taste or done something which we do not intend to do.

Shri H. V. Kamath : On a point of clarification, Sir, may I know whether this particular clause of article 48 will stand in the way of the President being provided with more than one official residence ? It speaks of the President having "an official residence. "

The Honourable Dr. B. R. Ambedkar : Not at all. There may be two official residences.

Then, with regard to the amendment of Mr. Sarwate, No. 28,1 would like to say that this matter may have to be considered when we deal with the Constitution of the States which will accede to the Indian Union. Today the situation is so fluid that it is very difficult to make any provision of the sort which has been suggested by Mr. Sarwate.

Mr. Vice-President: The amendments will now be put to vote, one by one. Amendment No. 1130, standing in the name of Dr. Ambedkar.

[*All amendments of Dr. Ambedkar as shown were accepted. Amendments standing in the name of Mr. Sarwate, Mr. Naziruddin Ahmed, Mr. Kamath and Prof. K. T. Shah were negatived. Article 48, as amended, was adopted and added to the Constitution.*]

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ARTICLE 49

***Mr. Vice-President :** We now come to article 49.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move :

> "That in article 49 after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' he inserted."

Sir, this is only making a provision in case the Chief Justice of India is not present, some other Judge should do his function, and it is but proper that the senior-most judge of the Supreme Court should do this function. Sir, I trust the House will accept the amendment because it needs no further explanation.

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*CAD, Vol. VII, 27th December 1948, p. 1047.

Mr. Vice-President : Dr. Ambedkar, do you accept that amendment ?

The Honourable Dr. B. R. Ambedkar : Yes, I do.

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***Mr. Vice-President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari, that is No. 1144, and also amendment No. 1146 by Mr. Kaniath, as amended by Mr. Tyagi's amendment.

With regard to the first amendment, that moved by Mr. T. T. Krishnamachari, not much argument is necessary. His amendments is certainly better than the amendment that stood in my name.

With regard to the second amendment, No. 1146, in view of the fact that 1 am prepared to accept it in the form amended by Mr. Tyagi, I do not think I am called upon to enter into the merits of the question. But perhaps, it might be as well that I should say a few words as to why the Drafting Committee itself did not introduce in its original draft, the words "in the name of God." Sir, I do not think that this matter was considered fully by the Drafting Committee and therefore I cannot advance any adequate reason why they did not originally put in those words.

So far as I am concerned, I feel that this was a matter which required some consideration. If the House will permit me, I would express my own views on the matter. The way I felt about it is this. The word "God" so far as my reading goes, has a different significance in different religious. Christians and Muslims believe in God not merely as a concept, but as a force which governs the world and which governs, therefore, the moral and spiritual actions of those who believe in God. So far as Hindu theology was concerned, according to my reading—and I may be wholly wrong, I do not pretend to be a student of the subject—I felt that the word "Eswara" or to use a bigger word, "Parameswara" is merely a summation of an idea, of a concept. As I said, to use the language of integral calculus, you put sums together and find out something which is common, and you call that "S" which is merely a summation. There is nothing concrete behind it. If in Hindu

*CAD, Vol. VII, 27th December 1948, pp. 1060-62.

theology there is anything concrete, it is "Brahma", "Vishnu", "Mahesh", "Siva", "Sakti". There are things which are accepted by Hindus as forces which govern the world. It seems to me, that it would have been very difficult for the Drafting Committee to have proceeded upon this basis and to have introduced phraseology which would have required several underlinings—God, below that Siva, below that Vishnu, below that Brahma, below that Sakti and so on and so on. It is because of this embarrassment that we left the situation blank, as you will find in the Drafting Committee.

Shri A. V. Thakkar [United State of Kathiawar (Saurashtra)] **:** But there is one above all.

The Honourable Dr. B. R. Ambedkar : I am, however, quite happy that this amendment has been introduced. Now, some Members have raised objections to the amendment. They are afraid that the introduction of the word God in the Constitution is going to alter the nature of what has been proclaimed to be a secular State. In my judgment, the introduction of the word God does not raise that question at all. The reason why the word God is introduced is a very simple one. The Constitution lays down certain obligations upon the President. Those obligations are obviously divisible into two categories, obligations for which there is legal sanction and legal punishment provided, and there are obligations for which there are no legal rules provided, nor any punishment is provided. Consequently, in every constitution this question always arises. What is to be the sanction of such duties, such obligations, as have been imposed upon a particular functionary for which it is not possible by law to provide a criminal sanction, a penalty ? It is obvious that unless and until we decide or we believe that these moral duties for which there is no criminal or legal sanction are not mere pious platitudes, we must provide some kind of sanction. To some people God is a sanction. They think if they take a vow in the name of God, God being the governing force of the Universe, as well as of their individual lives, that oath in the name of God provides the sanction which is necessary for the fulfilment of obligations which are purely moral and for which there is no sanction provided.

There are people who believe that their conscience is enough of a sanction. They do not need God, an external force, as a sentinel or

a watchman to act by their side. They think a solemn affirmation coming out of their conscience is quite enough of a sanction. If honourable Members have read the history of this matter which is embodied in the struggle between Mr. Bradlaugh and the House of Commons, they will realize that as early as 1880 or so, Mr. Bradlaugh insisted that he was a perfectly moral being, that his conscience was quite active, and that if he took the oath his conscience was enough of a sanction for him to keep him within the traces, so to say. After a long long struggle in the House of Commons, in which on one occasion Mr. Bradlaugh was almost beaten to death by the Sergeant-at-Arms for trying to sit in the House of Commons and taking part in its proceedings without taking the oath to which he raised objection. Mr. Gladstone ultimately had to yield and to provide an additional or alternative form which is called solemn affirmation. Therefore the issue that is involved in this amendment has nothing to do with the character of the State. Whether it is a secular or a religious State is a matter quite outside the bounds of the issue raised. The only question raised is whether we ought not to provide some kind of a sanction for the moral obligation we impose on the President. If the President thinks that God is a mentor and that unless he takes an oath in the name of God he will not be true to the duties he assumes, I think we ought to give him the liberty to swear in the name of God. If there is another person with whom God is not his mentor, we ought to give him the liberty to affirm and carry on the duties on the basis of that affirmation.

I therefore submit that the amendment is a good one and I am prepared to accept it.

Mr. Vice-President : You have nothing to say on the amendments moved by Mr. Karimuddin and Prof. Shah'?

The Honourable Dr. B. R. Ambedkar : No, Sir.

[Amendment moved by T. T. Krishnamachari as mentioned before was adopted.]

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Mr. Vice-President : The next amendment to be put to the vote is No. 1146. But this is identical with Mr. Mahavir Tyagi's amendment and if Mr. Kamath agrees I shall put this one to the vote.

Shri H. V. Kamath : I have no objection to Mr. Tyagi's amendment, as there is a mere verbal difference between his and mine.

Mr. Vice-President : Then I shall put Mr. Tyagi's amendment, which is an amendment to amendment No. 1146, to vote.

Shri H. V. Kamath : No, Sir. My amendment as amended by Mr. Tyagi should be put to the vote.

Mr. Vice-President : Yes, yes ; that is understood, I did not know that you were such a stickler for forms ; You break so many forms systematically !

The question is :

"That in article 49 for the words 'do solemnly affirm (or swear)', the following be substituted :—

'do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$'."

The amendment was adopted.

Article 49, as amended, was adopted and added to the Constitution.

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***Mr. Vice-President:** Amendment Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I move :

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President : Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir : I want to discuss it. My amendment is quite different from Dr. Ambedkar's. They are not the same.

Mr. Vice-President : It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better, I think.

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†Mr. Vice-President : ...Amendment No. 1177 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in clause (4) of article 50. for the words 'passed, supported by' the words 'passed by a majority of' be substituted."

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‡The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the many amendments winch have been moved to this article, I can accept only two. One is No. 1158 moved by my Friend, Mr. Gupte

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*CAD, Vol. VII, 28th December 1948. p. 1065.

†*Ibid* p. 1067.

‡*Ibid.,* pp. 1070-82.

providing of fourteen days' notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No. 1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K.T. Shah Nos. 1151, 1171, 1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned, I do not see that there is any necessity for any such amendment at all; because Prof. Shah referred to the article—I think it is sub-clause (4) or (3),—it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that there is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four, different propositions. Firstly, the motion for impeachment may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And

fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Lower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Lower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper Chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof. K. T. Shah felt so sure about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we could ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person, so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. (*Laughter*). I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-colons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so

deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee,

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury—and this is no doubt a sort of jury, which will investigate and come to a conclusion—I do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or percedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by bare majority or two-thirds majority ? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done ? Obviously there will be a tie. Prof. K. T. Shah provided in my judgment, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K. T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now, Sir, I think my Friend, Mr. Mohd. Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no other censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination

of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my honourable Friend. Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, 'violation of the Constitution'. My own view is this. The phrase 'violation of the Constitution' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase "violation of the Constitution".

His other amendment is amendment No. 1170, whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective ; in fact, I share it. The only point is this : whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take

place in the Upper Chamber and trial may take place in the Lower Chamber, and *vice versa*. So, both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made, either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit is carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

I come to his third amendment, No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occasion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly posssible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting, a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by parliamentary legislation.

Shri H. V. Kamath : Am I to understand that Dr. Ambedkar is personally in favour of this amendments ?

The Honourable Dr. B. R. Ambedkar: Yes ; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this : is it necessary to have these disqualifications laid down specifically and expressly in the Constitution ? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this : whether the people of this country would be so wanting in sense of public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President: The amendments which have been moved will now be put to vote.

[Following amendments were accepted by Dr. Ambedkar and adopted by the House.]

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***Mr. Vice-President :** I now put to vote amendment No. 1160 as modified by the amendment of Mr. T. T. Krishnamachari. The question is :

> "That is sub-clause (a) of clause (2) of article 50. for the words 'thirty members'. the words 'one-fourth of the total number of members' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is :

> "That in sub-clause (a) of clause (2) of article 50. for the words 'after a notice' the words 'after at least 14 days notice' be substituted."

The amendment was adopted.

* CAD, Vol. VIII, 28th December 1948, p. 1083.

Mr. Vice-President : The question is :

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

[In all 15 amendments were negatived. One of them was discussed as under.]

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***Mr. Vice-President :** The question is : Amendment No. 1185.

Mr. Naziruddin Ahmad : Sir, no reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I said I oppose it.

Mr. Vice-President : The question is :

"That in clause (4) of article 50. for the words 'date on which' the words 'time when' be substituted."

The amendment was negatived.

[Article 50, as amended was adopted and added to the Constitution.]

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ARTICLE 51

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†Mr. Vice-President : Amendments Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I fail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on, he should continue to be the President for the full term perscribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

[All the three amendments were negatived. Article 51 was adopted to the Constitution. The motion was adopted. Article 51 was added to the Constitution.]

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*CAD, Vol. VII, 28th December 1948, p. 1084.

†*Ibid*., p. 1087.

ARTICLE 52

[Article 52 was adopted without discussion and added to the Constitution.]

ARTICLE 53

***Mr. Vice-President :** Then we come to article 53. Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No. 1202 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 53 for the words 'or position of emolument' the words 'of profit' be substituted."

Mr. Vice-President : Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir : I am not moving it, Sir.

Mr. Vice-President : Then amendment No. 1205 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That to the proviso to article 53, the following be added : —

'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution.'"

The provision is intended to prevent making a double profit.

Mr. Vice-President : There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments ?

Shri H. V. Kamath : On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only ?

The Honourable Dr. B. R. Ambedkar : The salary of the President. salary of the office.

Mr. Vice-President : Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is :

"That in article 53, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

* CAD, Vol. VII, 28th December 1948, pp. 1088-89.

Mr. Vice-President : Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one ?

Mr. Naziruddin Ahmad : No, Sir.

Vice-President : Then I shall put to vote amendment No. 1205.

The question is :

"That to the proviso to article 53. the following be added :—

'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution'."

The amendment was adopted.

Article 53, as amended, was adopted and added to the constitution.

ARTICLE 54

***Mr. Naziruddin Ahmad :** Sir, I beg to move :

"That in clause (1) of article 54. for the words 'date on which', the words 'time when' be substituted."

(Speech of N.A.)

Mr. Vice-President : ...Amendments Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar : Sir. I move :

"That to clause (3) of article 54. the following be added:—

'and be entitled to such privileges, emoluments and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

This merely makes good an omission in the Draft Constitution.

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The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and another persons takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time?.....†

*CAD, Vol. VII, 28th December 1948, pp. 1089-92.

†Dots in the original debates indicate interruption.

Mr. Naziruddin Ahmad : I mean the actual time of appointment.

The Honourable Dr. B. R. Ambedkar : What is the time may be very different. Unless he prescribes the system I do not think that the introduction of the word 'time' introduces any greater clarity or definiteness at all.

Secondly, so tar as this particular clause is concerned 1 find that his amendment is quite unnecessary, because if he will read sub-clause(1) of article 54 he will see that it is stated "to fill such vacancy enters upon his office". Surely the entering upon office will he at sometime in the day—it may be midnight or it may be 12 o'clock in the day therefore time is specified so to say by implication and this amendment is therefore quite unnecessary.....*

Mr. Naziruddin Ahmad : The clause provides that the Vice-President shall act until the 'date' on which the new President enters upon his office and not the time when lie does so.

The Honourable Dr. B. R. Ambedkar : Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if Parliament makes no

*Dots in the original debates indicate interruptions.

provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath : Sir, may I invite the attention of my Honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office ? Am I to understand that you make a distinction between the Vice-President acting as President and the President ?

The Honourable Dr. B. R. Ambedkar : Yes, certainly.

Shri H. V. Kamath : Sir, Just now when I raised objection to an amendment to the last article. Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar : Unless Parliament otherwise provides, the Vice-Presidents gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be there for a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously, when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of office as President, the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President, *pro tempore*. There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad : Mr. Vice-President, may I ask.....

The Honourable Dr. B. R. Ambedkar : I do not submit myself to any cross examination at this stage.

Mr. Vice-Pesident : Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad : I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President : He refuses to listen to it. What can I do ? I cannot compel him to listen.

Mr. Naziruddin Ahmad : No one can compel him. The point is that in clause (3) of article 54.....

Mr. Vice-President : I am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Naziruddin Ahmad : I hope he will reconsider the matter.

Mr. vice-President: I have not called upon Mr. Naziruddin Ahmad to speak.

Mr. Naziruddin Ahmad : Sir, I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President : Why not do so at the third reading stage ? I am going to put the amendment to vote.

Mr. Naziruddin Ahmad : But, Sir, this is a matter of great importance.

Mr. Vice-President : You think so. May I ask you respectfully to go back to your seat ?

Mr. Naziruddin Ahmad : I shall comply with your request.

Mr. Vice-President: I shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The amendment was negatived.

[Amendment by Dr. Ambedkar as mentioned earlier was adopted.]

Article 54, as amended, was adopted and added to the constitution.

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ARTICLE 55

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***Mr. Vice-President :** ... Amendment No. 1224 Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That in clause (2) of article 55. for the words 'either of Parliament or' the words 'of either House of Parliament or of a House 'for the words' member of Parliament or 'the words 'member of either House of Parliament or of a House', and for the words 'in Parliament or such Legislature, as the case may be' the words 'in that Houe' be substituted respectively."

This is only to improve the language. There is no point of substance in it.

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*CAD, Vol. VII, 28th December 1948, p. 1095.

***Mr. Vice-President :** The next two amendments Nos. 1232 and 1233 are disallowed as being verbal.

Amendments Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (4) of article 55, for the words 'or position of emolument' wherever they occur the words 'of profit' be substituted."

Mr. Vice-President : Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote ?

Mr. Naziruddin Ahmad : No, Sir, the previous amendment will cover it.

Mr. Vice-President : What about amendment No. 1239 ?

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President : Amendments Nos. 1237 and 1238 are verbal and are, therefore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted :—

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, of'."

This matter has already been debated last time.

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†Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Mr. Vice-President, Sir, I regret that I cannot accept any of the amendments which have been moved, to this article. So far as the general debate is concerned, I think there are only two amendments which call for any reply. The first is the amendment moved by Mr. Tahir, No. 1215. Mr. Tahir's amendment proposes that the same system of election which has been prescribed for the President should be made applicable to the election of the Vice-President. Now, Sir, the difference which has

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CAD, Vol. VII, 28th December 1948, p. 1096.

†*Ibid.,* 29th December 1948, pp. 1100-02.

been made in the Draft Constitution between the system of election to the Presidentship and the system of election for the Vice-Presidentship is based upon the functions which the two dignitaries are supposed lo discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the Slates. Consequently, it is necessary that in his election, not only Members of Parliament should play their part, but the Members of the State Legislatures should also have a voice. But when we come to the vice-President, his normal functions are merely to preside over the Council of States. It is only on a rare occasion, and that too for a temporary period, that he may be called upon to assume the duties of a President. That being so, it does not seem necessary that the Members of the State Legislatures should also be invited to take part in the election of the Vice-President. That is the justification why the Draft Constitution has made a distinction in the modes of election of these two dignitaries.

The second amendment which calls for a reply is the amendment moved by Mr. Naziruddin Ahmad. No. 1219. He has suggested that the word "assembled" should be dropped. Now, the reason why the word "assembled" has been introduced in this article is to avoid election being conducted by posting of ballot papers. We all know that the postal system, when used for the purpose of electioneering is liable to result in failure. Either the ballot papers posted may not reach the destination and may be lost in transit ; or it is perfectly possible for a candidate to send round his agents in order to collect the ballot papers so that he may obtain possession of them, sign them himself and send them on without giving any opportunity to the elector himself to exercise his freedom in the matter of election. It is for this reason that it was decided that the election should take place when the two Houses assemble, so as to prevent the misuse of posting. Now, I do not think that the calling together of a meeting of the Members of Parliament for this purpose is going to introduce in practice a difficulty, or is going to introduce any inconvenience. Alter all. Members of Parliament would be meeting together for the purposes of legislation, and it would be perfectly possible to have the election during one of those sessions. I, therefore, submit that the original language is the more justifiable one, in view of the circumstances I have mentioned.

Now, Sir, with regard to Prof. K. T. Shah's amendment that the disqualifications, with regard to the Vice-President should be specified in the Constitution itself, that is a matter which I have already dealt with when replying to a similar amendment moved by him with regard to the President, and I said that this is a matter which could be provided for by law made by Parliament.

With regard to the suggestion which has been made both by Mr. Bhurathi and Mr. Naziruddin Ahmad about the use of the words "alternative vote", all I can say is this. If it is merely a matter of change of language, it might be possible for the Drafting Committee at a later stage, to consider this matter. But if—and I am not prepared to commit myself one way or the other—the alternative vote does involve some change of substance, then I am afraid it will not be possible for us to consider this matter at any stage at all.

Mr. Vice-President : I am now going to put the different amendments to vote, one by one.

[All the amendments except those moved by Dr. B. R. Ambedkar were negatived. Or. Ambedkar's amendments are mentioned earlier.]

Article 55, as amended, was adopted and added to the Constitution.

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ARTICLE 56

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***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I regret my inability to accept any of the amendments that have been moved to article 50. I should, however, like to meet some of the points that have been made by those who have moved the amendments. Sir, the first amendment was by Prof. Shah which laid down that provision should be made for pay and pension for the Vice-President. This is a matter which Prof. Shah has also raised in connection with the office of the President and I had stated my objection to making any such provision in the Constitution itself.

The Honourable Shri K. Santhanam (Madras : General) **:** May I point out that in Second Schedule express provision has been made ?

*CAD, Vol. VII, 29th December 1948, pp. 1113-15.

The Honourable Dr. B. R. Ambedkar : Having explained my position with regard to that point, I shall not repeat what I have said then. Coming to sub-clause (b) of article 56, various points have been raised. First of all a point has been raised that the words 'bribery, corruption etc.' should be added. Personally I do not think that any such particular phrase is necessary. Want of confidence is a very large phrase and is big enough to include any ground such as corruption, bribery etc. Therefore that amendment, in my judgment, is not necessary. The second point that has been made is that the removal of the Vice-President should be governed by the same rules as the removal of the President *viz.,* that there should be a majority of two-thirds. Now, Sir, with regard to that point. I would like to draw the attention of the House that although the Constitution speaks of Vice-President, he really is a Chairman of the Council of States. In other words, so far as his functions are concerned, he is merely an opposite number of the Speaker of the House of People. Consequently in making a comparison or comment upon the provisions contained in sub-clause (*b*) of article 56 those provisions should be compared with the articles dealing with the removal of the Speaker and they are contained in article 77(c). If this article 56(b) is compared with the article 77(c), members will find that the position is exactly identical. The same rules which are made applicable to the removal of the Speaker are also made applicable to the removal of the Vice-President who, as I have stated, is really another name for the Chairman of the Council of States. Consequently, the requirement of two-thirds majority is unnecessary.

And then my friend Mr. Kamath has raised what I might call a somewhat ticklish question. He said that sub-clause (*b*) of this article speaks of a majority, while when the reference is made to the House of the People, no such phraseology is used. Now, the matter is quite simple. Whenever we have said that a certain resolution has to be passed, it is understood that it has to be passed by a majority of the House. It is only when a special majority is mentioned that a reference is made to a majority and not otherwise. Now, I quite agree that his argument is that although we do not mention or specify any particular majority with respect to the Council of States, we have still used the phraseology—passed by a majority. Why is this distinction made ? Why is this distinction between the phraseology used in regard to the Council

of States and in regard to the House of the People ? Now, the difference has been made because of the word "then" occurring there. That word "then" is important. The word "then" means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said—passed by a majority of the then members.

Shri H. V. Kamath : Does it mean the total number of members of the Council of States ?

The Honourable Dr. B, R. Ambedkar : Yes, The word 'then' is necessary.

Shri H. V. Kamath : On a point of clarification, Sir. Yesterday in article 50, we used the phraseology 'passed by a majority 'in place of the two-thirds majority. Should we not do the same thing here to make the meaning clearer ?

The Honourable Dr. B. R. Ambedkar : I shall explain it presently. The reason is due to the fact that we have to use the word 'then' which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting.

Shri H. V. Kamath : Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority ?

The Honourable Dr. B. R. Ambedkar : Yes.

Now, coming to the point raised by my friend Mr. Tahir, amendment No. 1266. If I understood him correctly, what he says is that the resolution of no confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker. There also we do not require that it should be passed by two-thirds majority or two-thirds of the members of the House.

Then, coming to the amendment of my friend Mr. Naziruddin Ahmad, who wants that in clause (c) after the word "term" words such as resignation etc. should be inserted. This amendment is absolutely unnecessary, because this article does not make any

provision for tilling casual vacancies. There is no necessity for making any provision for casual vacancies because under article 75, sub-clause (1) there is always the Deputy Chairman who is there to step in whenever there is any casual vacancy. Consequently such an amendment is unnecessary.

Sir, I hope that with this explanation, the House will accept the article as it stands.

Mr. Vice-President : I may now put the amendments, one by one to vote.

[All the amendments were negatived. Article 56 was adopted and added to the Constitution.]

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ARTICLE 57

***The Honourable Dr. B. R. Ambedkar :** I am afraid Prof. K. T. Shah has not considered the matter as fully as he ought to have before moving his amendment. The omission of the Vice-President from article 57 is a very deliberate one, because as my friend Mr. Tajamul Husain has just now pointed out, his main functions, which are those of the Chairman of the Council of States, have been amply provided for by article 75 (1) where there is a Deputy Chairman who will function in his absence. It is therefore unnecessary to introduce any such amendment in article 57.

My friend Prof. Shah said that I was really borrowing very liberally from the amendments of other friends whenever I found that the Draft was in some way defective. I think Prof. K. T. Shah, if I may say so, has indirectly paid me a compliment because, as Emerson has said, "A genius is the most indebted man" and I am certainly most indebted to my friends.

Mr. Vice-President : I am now putting the amendments to vote.

The question is :

"That in article 57, after the words 'the functions of President' the words 'or Vice-President' be added."

The amendment was negatived.

Mr. Vice-President : There are no other amendments. The question is :

"That article 57, stand part of the Constitution."

The motion was adopted.

Article 57 was added to the Constitution.

* CAD, Vol. VII, 29th December 1948, p. 1117.

[Article 58 was added to the Constitution without any amendment.]

ARTICLE 59

***Mr. Vice-President :** Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajamul Husain ?

The Honourable Dr. B. R. Ambedkar : Yes, Sir. It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this : the power of commutation of sentence for offences enacted, by the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajamul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (*3*) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr. Vice-President: Now I will put the amendment of Mr. Tajamul Husain to vote. The question is :

"That clause (3) of article 59 be deleted."

The amendment was negatived.

*CAD, Vol. VII, 29th December 1948, pp. 1119-20.

Mr. Vice-President: I shall now put article 59 to vote. The question is :

"That article 59 stand part of the Constitution."

Article 59 was adopted and added to the Constitution.

ARTICLE 60

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands it lays down two propositions. The first proposition is that generally the authority to excute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent field, the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this ; that in all cases, ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard lo the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my Honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre issue directions, with regard to matters falling within Items

*CAD, Vol. VII, 30th December 1948, pp. 1136-40.

25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As Honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act, 1935, gives to the Centre. The amendment of my Honourable Friend, Pandit Kunzru wishes to restore the position back to what it now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar : Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have die power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed—and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pocker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea.....*

B. Pocker Sahib Bahadur : I have not said that. Sir. I only said that it is the duty of every Member to act according to his conscience.

The Honourable Dr. B. R. Ambedkar: By which I mean, I suppose that every Member who has conscience must oppose the proviso. It cannot mean anything else. (*Laughter.*)

B. Pocker Sahib Bahadur : Certainly not.

The Honourable Dr. B. R. Ambedkar : Now, Sir. this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my Honourable Friend, Pandit Kunzru forgot altogether that history ; I have no doubt about it that he is familiar with that history as I am myself.

*Dots in the original debates indicate interruption.

This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government, so far as legislation in the concurrent field was concerned, was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority, such as for instances in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State held to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent field. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle ; it is justified because it was a concession made to the Muslims. Therefore, it is not proper to rely upon Section 126 in drawing any

support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As Honourable Members will remember, Section 126 was supplemented by Section 126-A by a law made by Parliament just before the war was declared. Why was it that the Parliament found it necessary to enact Section 126-A ? As you will remember Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary purposes and ordinary times as well. My first submission to the House therefore is this ; that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

Coming to the proviso.....*

B. Pocker Sahib Bahadur : With your permission, Sir, may I just correct my learned Friend ? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

The Honourable Dr. B. R. Ambedkar : I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was

*Dots in the original debates indicate interruption.

there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them. (*Interruption.*)

Mr. Vice-President : Order, order.

The Honourable Dr. B. R. Ambedkar : I was saying that there is no substance in the argument that we are departing from the provision contained in Sectiion 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this proviso. My honourable Friend Mr. T. T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the concurrent field to take upon itself the authority to administer. I shall just quote one short paragraph from a well known book called "Legislative and Executive Powers in Australia" by a great lawyer Mr. Wynes. This is what he says :

"Lastly, there are Commonwealth Statutes. Lefroy states that executive power is derived from legislative power unless there be some restraining enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive—e.g., in the case of defence—the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised."

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does, the execution of that law is automatically transferred to the Commonwealth. Therefore, comparing the position as setout in the proviso with the position as it is found in Australia, I submit that we are not making

any violent departure from any federal principle that one may like to quote. Now, Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent List. Let me give one or two illustrations. The Constituent Assembly has passed article 11, which abolishes unreliability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights. Supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands, waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws ? As everyone will remember, the execution of such a law might require The establishing of additional police, special machinery for taking down if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law of this character have the authority to execute it ? I would like to know it there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bhargava who has been such a staunch supporter of this matter has been stating always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is

so much interested in putting down these evils should have some authority for executing laws of this character ? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect ? Take, for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India, cases after cases in which it was reported that no Provincial government or at least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the central Government should be mere paper legislations with no effect given to them ? How can effect be given to them unless the centre has got some authority to make good the administration of laws which it makes ? I therefore submit that having regard to the cases which I have cited—and I have no doubt honourable Members will remember many more cases after their own experience—that a large part of legislation which the centre makes in the Concurrent Held remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Governments ought to welcome this proviso because there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administration means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit. Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse. (*Cheers*).

[All 4 amendments were negatived. Article 60 was adopted without any amendment and added to the Constitution.]

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ARTICLE 61

***Mr. Vice-President:** Dr. Ambedkar.

Shri Lakshminarayan Sahu : (Orissa : General): Sir, this is a very important article on which I would like to……..

Mr. Vice-President: I know there are many Members who would like to speak on this article, but the time at the disposal of the House is extremely limited and I also feel that it has been sufficiently debated on.

Shri Lakshminarayan Sahu: But, Sir……..

Mr. Vice-President: Kindly do not try to over-rule the Chair. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept any of the amendments which have been tabled, either by Mr. Baig or Mr. Tahir or Prof. K. T. Shah. In reply to the point that they have made in support of the amendments they have moved, I would like to state my position as briefly as I can.

Mr. Mahboob Ali baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According to him they should be fifteen. The second part of his proposition is that the Members of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

Now, Sir, the first part of his amendment is obviously impracticable. It is not possible at the very outset to set out a fixed number for the Cabinet. It may be that the Prime Minister may find it possible to carry on the administration of the country with a much less number than fifteen. There is no reason why the Constitution should burden him with fifteen Ministers when he does not want as many as are fixed by the Constitution. It may be that the business of the Government may grow so enormously big that fifteen may be too small a number. There may be the necessity of appointing more members than fifteen. There again it will be wrong on the part of the Constitution to limit the number of Ministers and to prevent him from appointing such number as the requirements of the case may call upon to do so.

*CAD, Vol. VII, 30th December 1948, pp. 1156-61.

With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation, I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage. I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so, I sympathise with the object he has in view, because I realise that a great deal of good administration, so to say, depends upon the fact as to in whose hands the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend, Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee proposes to make of a schedule which is called Schedule 3-A. It will be seen that we have in the Draft Constitution introduced one schedule called Schedule 4 which contains the Instrument of Instructions to the Governor as to how he has to exercise his discretionary powers in the matter of administration. We have analogous to that, decided to move an amendment in order to introduce another schedule which also contains a similar Instrument of Instructions to the President. One of the clauses in the proposed Instrument of Instruction will be this :

> "In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in a position collelectively to command the confidence of Parliament."

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baig has in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility, and there is no use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

Coming to the amendment of my friend, Mr. Tahir, he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discritionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied Section 50 of the Government of India Act before it was adopted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor-General was by law and statute invested with certain discretionary functions, which are laid down in Sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor-General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realise that all that the President will have under the new Constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

Under a parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose

its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

Mr. Mohd. Tahir : On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors ?

The Honourable Dr. B. R. Ambedkar : The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was *a persona non-grata* with the House : the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any Member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of The people. There is also the other view that notwithstanding the advice of the Prime Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives.

Now, Sir, I come to the amendments of Prof. K. T. Shah. It is rather difficult for me to go through his long amendments and to extract what

is really the *summon bonum* of each of these longish paragraphs. I have gone through them and I find that Prof. K. T. Shah wants to propose four things. One is that he does not want the Prime Minister, at any rate by statute. Secondly, he wants that every Minister on his appointment as Minister should come forward and seek a vote of confidence of the Legislature. His third proposition is that a person who is appointed as a Minister, if he does not happen to be an elected Member of the House at the time of his appointment, must seek election and be a Member within six months. His fourth proposition is that no person who has been convicted of bribery and corruption and so on and so forth shall be appointed as a Minister.

Now, Sir, I shall take each of these propositions separately. First, with regard to the Prime Minister, I have not been able to understand why, for instance. Prof. K. T. Shah thinks that the Prime Minister ought to be eliminated. If I understood him correctly, he thought that he had no objection if by convention a Prime Minister was retained as part of the executive. Well, if that is so, if Prof. K. T. Shah has no objection for convention to create a Prime Minister, I should have thought there was hardly any objection to giving statutory recognition to the position of the Prime Minister.

In England, too, as most students of constitutional law will remember, the Prime Minister was an office which was recognised only by convention. It is only in the latter stages when the Act to regulate the salaries of the Ministers of Cabinet was enacted. I believe in 1939 or so, that a statutory recognition was given to the position of the Prime Minister. Nonetheless, the Prime Minister existed.

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach

of what might he called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a member of the cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

Supposing you have no Prime Minister, what would really happen ? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately, singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was fell that a person if he is appointed a Minister will likely

to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the Legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

With regard to his third proposition, *viz.,* that if a person who is appointed a member of the Cabinet is not a member of the Legislature, he must become a member of the Legislature within six months, I may point out that this has been provided for in article 62(5). This amendment is therefore unnecessary.

His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this : whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them ? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.

Shri H. V. Kamath : I am afraid Dr. Ambedkar has lost sight of amendment No. 47 in List IV of the fifth Week.

Mr. Vice-President: He is not bound to reply to everything. The reply to that amendment has been given by Mr. Tajamul Husain.

The Honourable Dr. B. R. Ambedkar : That does not require any reply. All that has to be left to the Prime Minister.

Mr. Vice-President: I will now put the amendments, one by one, to vote.

[All 5 amendments were negatived. Article 61 was adopted and added to the Constitution.]

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ARTICLE 62

Mr. Vice-President: (Dr. H. C. Mookherjee) : We shall now resume discussion of article 62.

(Amendments Nos. 1310 and 1311 were not moved.)

Nos. 1312 and 1329 are of similar Import. No. 1329 may be moved. Dr. Ambedkar.

***The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Sir, I move :

> "That utter clause (5) of article 62 the following new clause he inserted ;—(5) (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall he generally guided by the instructions set out in Schedule III-A, hut the validity of anything done by the President shall not he called in question on the ground that it was done otherwise than in accordance with such instructions.'"

* * * * *

†Shri Mahavir Tyagi : ...Then there is the amendment of Prof. Shah in which he says that Ministers should know the English language for ten years, and Hindi after the next ten years. I happen to be an anarchist by faith so far as literacy is concerned, I do not believe in the present-day education. I am opposed to the notion of literacy also, even though it has its own value. If I were a boy now, I would refuse to read and write. As it was, I practically refused to read and write and hence I am a semi-literate. The majority in India are illiterate persons. Why should they be denied their share in the administration of the country ? I wonder, why should literacy be considered as the supreme achievement of men. Why should it be made as the sole criterion for entrusting the governance of a country to a person, and why Art, Industry, Mechanics, Physique or Beauty be not chosen as a better criterion. Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering

*CAD, Vol. VII, 31st December 1948, p. 1167.

†*Ibid.,* p. 1184.

their States very well. I submit. Sir, that we should not attach too much importance to literacy. I ask Dr. Ambedkar, does he ever write ? Probably he has got writers to write for him and readers to read to him. I do not see why Ministers need read and write. Whenever they want to write anything, they can use typists. Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity. These are the qualifications that a man should have to become a Minister. It is not literacy which is important.

Shri H. V. Kamath : Does my redoubtable friend want to keep India as illiterate as she is today?

The Honourable Dr. B. R. Ambedkar : Have you any conscientious objection against literacy ?

Shri Mahavir Tyagi: No, Sir.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, of the amendments that have been moved I am prepared to accept amendment No. 1322 and 1326 as amended by No. 71 on List V. As to the rest of the amendments I should just like to make a sort of running commentary.

These amendments raise three points. The first point relates to the term of a Minister, the second relates to the qualifications of a Minister and the third relates to condition for membership of a Cabinet. I shall take the first point for consideration, *viz.,* the term of a Minister. On this point there are two amendments, one by Mr. Pocker and the other by Mr. Karimuddin. Mr. Pocker's amendment is that the Minister shall continue in office so long as he continues to enjoy the confidence of the House, irrespective of other considerations. He may be a corrupt minister, he may be a bad minister, he may be quite incompetent, but if he happened to enjoy the confidence of the House then nobody shall be entitled to remove him from office. According to Mr. Karimuddin, the position that he has taken, if I have understood him correctly, is just the opposite. His position seems to be that the Minister shall be liable to removal only on impeachment for certain specified offences such as bribery, corruption, treason and so on, irrespective of the question whether he enjoys the confidence of the House or not. Even

*CAD, Vol. VII, 31st December 1948, pp. 1185-89.

if a minister lost the confidence of the House, so long as there was no impeachment of that Minister on the grounds that he has specified, it shall not be open either to the Prime Minister or the President to remove him from office. As the Honourable House will see both these amendments are in a certain sense inconsistent, if not contradictory. My submission is that the provision contained in sub-clause (2) of article 62 is a much better provision and covers both the points. Article 62, (2) states that the ministers shall hold office during the pleasure of the President. That means that a Minister will be liable to removal on two grounds. One ground on which he would be liable to dismissal under the provisions contained in sub-cluase (2) of article 62 would be that he has lost the confidence of the House, and secondly, that his administration is not pure, because the word used here is "pleasure". It would be perfectly open under, that particular clause of article 62 for the President to call for the removal of a particular Minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular Minister probably is a person who enjoyed the confidence of the House. I think honourable Members will realise that the tenure of a Minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House. The article makes provision for both and therefore the amendments moved by my Honourable Friends, Messrs. Pocker and Karimuddin are quite unnecessary.

With regard to the second point, namely, the qualifications of Ministers, we have three amendments. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a Minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso, namely, that although a person is not at the time of his appointment a. member of the House, he may nonetheless be appointed as a Minister in the cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K. T. Shah. He said that a Minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister

unless he is at the time of his appointment an elected member of the House. I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this.—it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all, the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. Therefore, this qualification, in my judgment, is quite unnecessary.

With regard to the second qualification, namely, that a member must be a member of the majority party, I think Prof. K. T. Shah has in contemplation or believes and hopes that the electorate will always return in the election a party which will always be in majority and another party which will be in a minority but in opposition. Now, it is not permissible to make any such assumption. It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties, none of which is in a majority. How is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority ? Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes government quite impossible.

Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of the majority party

as well as on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party Government, so that Government may be able to meet an emergency—in that event, again, no such situation can be met except by a coalition Government and if a coalition Government takes the place, *ex hypothesi* the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both these grounds this amendment is not a practicable amendment,

With regard to the educational qualification, notwithstanding what my friend Mr. Mahavir Tyagi has said on the question of literary qualification, when I asked him whether in view of the fact that he expressed himself so vehemently against literary qualification whether he has any conscientious objection to literary education, he was very glad to assure me that he has none. All the same, I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a tiling. Supposing the official language was Hindi, Hindustani or Urdu—whatever it is—in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the Administration and while therefore it is no doubt a very desirable thing to bear in mind that persons who would hold a portfolio in the Government should have proper educational qualification, I think it is, rather unnecessary to incorporate this principle in the Constitution itself.

Now, I come to the third condition for the membership of a Cabinet and that is that there should be a declaration of the interests, rights and properties belonging to a Minister before he actually assumes office. Tins amendment moved by Prof. K. T. Shah is to some extent amended by Mr. Kamath. Now, this is not the first time that this matter has been debated in the House. It was debated at the time when similar amendments were moved with regard to the article dealing with the appointment and oath of the President and I have had a great deal to say about it at that particular time and I do not wish to repeat what I said then on this occasion. My Friend Mr. Kamath reminded me of what I said on the occasion when the article dealing with the President

was debated in this House and I do remember that I did say that such a provision might be necessary.....*

Shri H. V. Kamath : May I remind Dr. Ambedkar of what exactly he said? I am reading from the official type-script of the Assembly Secretariat. These are his very words :

> "If any person in the government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision *ought* to have been imposed upon them for their tenure hut not upon the President."

The Honourable Dr. B. R. Ambedkar : That is what I was saying. What I said was that such a provision might be necessary in the case of Ministers, and my Friend Mr. Kamath also read some section from the Factory Act requiring similar qualifications for a Factory Inspector. Now, Sir, the position that we have to consider is this : no doubt, this is a very laudable object, namely, that the Ministers in charge should maintain the purity of administration. I do not think anybody in this House can have any quarrel over that matter. We all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency but also of purify. The question really is this? what ought to be the sanctions for maintaining that purity ? It seems to me there are two sanctions. One is this, namely, that we should require by law and by Constitution,—if this provision is to be effective—not only that the Ministers should make a declaration of 'their' assets and their liabilities at the time when they assume office, but we must also have two supplementary provisions. One is that every Minister on quitting office shall also make a declaration of his assets on the day on which he resigns, so that everybody who is interested in assessing whether the administration was Corrupt of not during the tenure of his office should be able to see what increase there is in the assets of the Minister and whether that increase can be accounted for by the savings which he can make out of his salary. The other provision would be that if we find that a Minister's increases in his assets on the day on which he resigns are not explainable by the normal increases due to his savings, then there must be a third provision to charge the Minister for explaining how he managed to increase his assets to an abnormal degree during that period. In my judgment, if you want to make this clause effective, then there must be three provisions as I stated. One is a declaration at the outset; second is a declaration at the end of the quitting of this office; thirdly, responsibility for explaining as to how the assets have

*Dots in the original debates indicate interruption.

come to be so abnormal and fourthly, declaring that to be an offence, followed up by a penalty or by a fine. The mere declaration at the initial state.....*

Mr. Naziruddin Ahmad : How could you trace or check invisible assets or secret assets ?

The Honourable Dr. B. R. Ambedkar : The whole thing is simply good for nothing, so to say. It might still be possible, notwithstanding this amendment for the Minister to arrange the transfer of his assets during the period in such a manner that nobody might be able to know what he has done and therefore, although the object is laudable, the machinery provided is very inadequate and I say the remedy might be worse than the disease.

Shri H. V. K a math : May I, Sir, presume that Dr. Ambedkar at least accepts the amendment in principle and that he has not resiled from the view which he propunded the other day, that he has not recanted,?

The Honourable Dr. B. R. Ambedkar : I do not resile from my view at all. All I am saying is that the remedy provided is very inadequate and not effective, and therefore, I am not in a position to accept it.

Prof. Shibban Lal Saksena : Make it more comprehensive.

The Honourable Dr. B. R. Ambedkar : I cannot do it now. It was the business of those who move the amendment to make the tiling foolproof and knave-proof, but they did not.

Now, Sir, I was saying that nobody has any objection, nobody quarrels with the aim and object which is behind this amendment. The question is, what sort of sanction we should forge. As I said, the legal sanction is inadequate. Have we no other sanction at all ? In my judgment, we have a better sanction for the enforcement of the purity of administration, and that is public opinion as mobilised and focussed in the Legislative Assembly. My Honourable Friend. Mr. H. V. Kamath cited the illustration of the Factory Act. The reason why those disqualifications had been introduced in the case of the Factory Inspector is because public opinion cannot touch him, but public opinion is every minute glowing, so to say, against the Ministry, and if the House so desires at any time, it can make itself felt on any particular point of maladministration and remove the Ministry; and my

*Dots in the original debates indicate interruption.

submission, therefore, is that there is far greater sanction in the opinion and the authority of the House to enforce purity of administration, so as to nullify the necessity of having an outside legal sanction at all.

Shri Lokanath Misra (Orissa; General)**:** Is that not a more impossible task ?

The Honourable Dr. B. R. Ambedkar : Democracy has to perform many more impossible tasks. If you want democracy, you must face them.

Now, Sir, I come to the amendment of my Honourable Friend, Mr. Naziruddin Ahmad. He wants the deletion of the latter part of the amendment which I moved. His objection was that if the latter part of my amendment remained, it would nullify the earlier part of my amendment, namely, the obligation of the Minister to follow the directions given in the Instrument of Instructions. Yes, theoretically that is so. There again the question that arises is this. How are we going to enforce the injunctions which will be contained in the Instrument of Instructions ? There are two ways open. One way is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the legislature itself and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is made subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that that would be an intolerable interference in the work of the Assembly. Even in England the Parliament is not subject to the authority of the Court in matters of procedure and in the conduct of its own business and I think that is a very sound rule which we ought to follow, especially when it is perfectly possible for the House to see that the Instrument of Instructions is carried out in the terms in which it is intended by the President and by the Ministry. Sir, I oppose this amendment.

Prof. Shibban Lal Saksena : What about nominated members being in the Cabinet ?

The Honourable Dr. B. R. Ambedkar : I have dealt with that.

Mr. Vice-President: I shall now put the amendments one by one to vote.

(Amendments which were adopted are give below:-

(Amendments by Dr. Ambedkar)

(1) "That after clause (5) of article 62, the following new clause be inserted—

'5 (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the Instructions set out in Schedule III-A but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.'"

(2) That in clause (3) of article 62, after the word 'Council' the words 'of Minister' be inserted.

Amendment No. 1326 as amended by amendment No. 71 of List V as further amended by Shri Krishnamachari and Shri Kamath.

"That in clause (5) of article 62, for the words 'for any period of six consecutive months, is' the words 'from the date of his appointment is for a period of six corrective months', be substituted."

[Article 62, as attended was adopted and added to the Constitution.]

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ARTICLE 66

***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** I do not accept any of the amendments, nor do I think that any reply is called for.

Mr. Vice-President: I shall now put the amendments one by one **to** vote. Amendment No. 1358. The question is:

That in article 66 the words and two Houses tone know respectively as the council of State 'be deleted."

The amendment was negatived.

Mr. Vice-President: amendment No. 1356. The question is:

"That in article 66 for the words 'There shall be a Parliament for the Union which' the words The Legislatures the Union shall be called the Indian National Congress and be substituted."

The amendment was negative.

Mr. Vice-President: Amendment No. 1357. The question is :

"That in article 66, the words 'The President and' be deleted."

The amendment was negative.

*CAD, Vol. VII, 3rd January 1948, pp. 1199-1200.

Mr. Vice-President: The question is':

"That article 66 stand part of the constitution."

The motion was adopted.

Article 66 was added to the constitution.

ARTICLE 67

Mr. Vice-President: We next come to article 67. The motion: is :

"That article 67 form part of the Constitution."

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, I have an humble suggestion to make in the matter of procedure when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of states and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts : one relating to the composition of the council of states—clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People, clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straightway to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when Honourable Members deaf with the Council of States they may confine their discussion on it and later on they may concentrate their discussion on the part of the article relating to, the House of the People.

Mr. Vice-President: Have you anything to say, Dr. Ambedkar, regarding this matter, namely, the suggestion of Mr. Bharathi ?

The Honourable Dr. B. R. Ambedkar : I am quite agreeable to the suggestion for the purpose of facilitating discussion.

Mr. Vice-President: Then we can take up the amendments in their particular order.

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***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That for clause (1) of article 67, the following be substituted :

'(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States.' "

The only important tiling is that the number fifteen has been brought down to twelve.

(Amendment Nos. 1371, 1373 and 1374 were not moved.)

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† Mr. Vice-President : There are three amendments which may be considered together, amendments numbers 1371, 1373 and 1374. Of these, the first seems to be the most comprehensive and may be moved.

Amendments Nos. 1371, 1373 and 1374 were not moved.

Amendments Nos. 1375 and 1376. Amendment No. 1375 may be moved.

Amendment No. 1376 is idential with amendment No. 1375, so I am not going to put it to vote. Amendment No. 1375, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I beg to move:

"That the proviso to clause (1) of article 67 be deleted."

With your permission, Sir, may I also move amendment No. 1378 ? It is in substitution of this proviso.

Mr. Vice-President: Yes.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That the following new clause be added after clause (1) of article 67 :

'(1a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

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‡Mr. Vice-President: Amendment No. 1380 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move :

"That for clause (2) of article 67, the following be substituted :

'(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Letters, art, science and social services.' "

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*CAD, Vol. VII, 3rd January 1949, p. 1202.

† *Ibid.,* p. 1205.

‡ *Ibid.,* p. 1211.

***Mr. Vice-President:** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I am agreeable to amendments Nos. 1369, 1375, 1378, 1380, 1400 and 1403. With regard to the last two amendments (Nos. 1400 and 1403) those are also covered by an amendment moved by Mr. Mahboob Ali baig. It is amendment No. 1407. I would have been glad to accept that amendment but unfortunately, on examining the text of that amendment, I find that it does not fit in with the generality of the language used in clause (3) of article 67. That is the only reason why I prefer to accept amendment No. 1403, because the language fits in properly with the language of the article.

With regard to the other amendments, I think there are only three which call for special consideration. One is an amendment by Mr. Kunhiraman. The aim and object ..... †

Mr. Vice-President: It was not moved.

The Honourable Dr. B. R. Ambedkar : Then I do not think I need say anything about it. There remain only two—one is the amendment of Mr. Kunzru. He was very naturally considerably agitated over the proviso which stood in the Draft Constitution and which provided for the 40 per cent representation to representatives of the States. I think it is desirable that I should celar the ground and explain what exactly was the reason why this proviso was introduced and what is the present position. It is quite true that in the Government of India Act, it was provided that although the States population formed one-quarter of the total population of India as it then stood in the Lower House, the States got representation which was one-third of the total and in the council of States they got two-fifths representation which was 40 per cent. That is not one origin as to why this proviso was introduced in the Draft Constitution. I should therefore like to go back and give the history of this clause.

Members of the House will remember that this House had appointed a Committee known as the Union Powers Committee. That Committee recommended a general rule of representation, both for people in British India as well as people in the Indian States and the rule was this : That there should be one seat for every million up to five millions, plus

*CAD, Vol. VII, 3rd January 1949, pp. 1225-28.

†Dots in the original debates indicate interruption.

one seat for every additonal two millions. As I said, this was to be a rule to be applicable both to the provinces as well as the States. But when the report of the Union Powers Committee came before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Powers Committee. Great many negotiations took place between the representatives of Indian provinces and the representatives of the Indian States. Consequently, if honourable Members will refer to the debates of the Constituent Assembly for 31st July 1947, my friend and colleague, Mr. Gopalaswami Ayyangar, who moved the adoption of the report of the Union Powers Committee, moved an amendment that the States representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent representation was introduced not so much with the aim of giving them weightage but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union unless the total of the representation granted to the States had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original State of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian provinces do not need separate representation. They will be represented through the provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunatly is not before the House, but will be introduced as an amendment when we come to the schedules, what is proposed to be done is this :

We have removed this 40 per cent ratio granted to the States and there will be equality of representation in the Upper Chamber, both to the Indian States us well as to the Provinces, and I am in a position to give some figures, which although they are not exact for the moment, are sufficient to give a picture of what is likely to be the contents of Schedule 3-A.

According to Schedule 3-A, the Provinces will have 141 seats. The Chief Commissioners' Provinces will have two and the States will have seventy altogether. Consequently, the total of elected members to the Upper Chamber will be 213. Add to that twelve nominated seats; That would bring the total to 225. Our clause, as amended, says that the total strength of the Council of States shall not exceed 250. You will thus see that the allocation of seats which it is proposed to make in Schedule 3-A satisfies two conditions, in the first place it removes? weightage and secondly, it brings the total of the House within the maximum that has been prescribed by the amendment that I have made, I think the House will find that this is a very satisfactory position.

Pandit Hirday Nath Kunzru : May I ask my honourable Friend whether the Staes in Part III of the first Schedule have been represented in accordance with their population?,

The Honourable Dr. B. R. Ambedkar: Yes, everybody will now. get population ratio.

Then I come to the second amendment—No. 1377 by Prof. K.T. Shah. Prof. K. T. Shah proposes that there should be a council pf the representatives of agriculture, industry, commerce and other special interests created by statute. It will be a permanent body of people. The States shall be required to give them salaries, allowances, and the duty of this council, as proposed by Prof. K. T. Shah, is that it shall have the statutory duty of giving advice to Government, and the Government will have the statutory obligation of consulting this body, and it shall not be permissible for the Government, I take it, to introduce any measure which, on the face of it, does not bear the endorsement that the statutory body has been consulted with regard to the contents of that Bill. I believe that is the purpose of Prof. K. T. Shah's amendment.

There are various objections to this. In the first place anyone who has held any portfolio in the Government of India or in the Provincial

Governments will know that this is the normal method which the Government of India and the Provincial Governments adopt before they finalise their legislative measures : there is no proposal brought forth by the Government of India in which the Government of India has not taken sufficient steps to consult organised opinion dealing with that particular matter. It seems to me that his provision which is a matter of common course is hardly necessary to be put in the Constitution. I therefore, think, that from that point of view it is unnecessary.

Then I should like to tell the House that it is proposed that at a later stage I should bring in an amendment which would permit the President to nominate three persons, either to the Council of States or to the House of the People, who shall be experts with regard to any matter which is being dealt with by any measure introduced by Government. If it is a matter of commerce, some person who has knowledge and information and who is an expert in that particular branch of the subject dealt with by the Bill, will be appointed by the President either to the Council of States or to the Lower House. He shall continue to be a member of the Legislature until the Bill is disposed of, he shall have the right to address the House, but he shall not have the right to vote. It is through that amendment that the Drafting Committee proposes to introduce into the House such expert knowledge as the Legislature at any particular moment may require. That justifies, as I said, the rejection of Prof. K. T. Shah's amendment; and also the other amendments which insisted that the other clauses of this article requiring that agriculture, industry and so on be also represented, become unnecessary. Because, whenever any such expert assistance is necessary, this provision will be found amply sufficient to carry out that particular purpose. Honourable members might remember that in the 1919 Act when Diarchy was introduced in the Provinces, a similar provision was introduced in the then Government of India Act, which permitted Provincial Governors to nominate experts to the House to deal with particular measures. Sir, I suppose and I believe that this particular proposal, which I shall table before the House through an amendment, will be sufficient to meet the requirements of the case.

Shri R. K. Sidhwa : Will the nomination clause remain ?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. Vice-President : I shall now put amendment No. 1379 to vote.

"That for clause (1) of article 67, the following be substituted :

'(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representative of the States.'

The amendment was adopted.

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***Mr. Vice-President :** I shall put amendment No. 1375, standing in the name of Dr. Ambedkar, to vote. It reads.

"That the proviso to clause (1) of article 67 be deleted."

Shri L. Krishnaswami Bharathi: On a point of Order, Sir, Amendment No. 1375 is out of order in view of the fact that we have already adopted amendment No. 1369 which is a substitution of the clause including the proviso. The proviso has been omitted now by the acceptance of the new clause. There is no point in having an amendment about something which is not in existence.

Mr. Vice-President: Then I shall not put it to vote.

[Five amendments as shown below were adopted, 23 amendments were negatived.]

Amendment No. 1378 :

"That the following new clause be added after clause (1) of article 67 :

"(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

The amendment was adopted.

Amendment No. 1380. (by Dr. B. R. Ambedkar)

"That for clause (2) of article 67, the following be substituted :

"(2) The members to he nominated by the President under sub-clause (a) of Clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely : ' Letters, art, science and social services.' "

The amendment was adopted.

Amendment No. 1400.

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added :

'in accordance with the system of proportional representation by means of the single transferable vote.' "

The amendment was adopted.

* CAD, Vol. VII, 3rd January 1949, pp. 1229-31.

Amendment No. 1403.

"That in sub-clause (b) of clause (3) of article 67, after the words 'of that House' the words 'in accordance with the system of proportional representation by means of the single transferable vote' be inserted."

The amendment was adopted.

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***Mr. Vice-President:** The first part of amendment No. 1425 and amendment No. 1426 standing in the name of Mr. Kamath are identical. I propose that amendment No. 1425 may be moved, the first as well as the second part. Mr. Kamath, do you want your amendment No. 1426 to be put to vote ?

Shri H. V. Kamath: I see that Dr. Ambedkar has stolen a march over me and so I do not propose to move my amendment.

Mr. Vice-President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** I am not moving it.

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†Pandit Thakur Dass Bhargava : Signing the name can be learnt in two month.

Shri M. Ananthasayanam Ayyangar : With what effect ? It is idle to think that merely if a man is able to sign his name, he will immediately become such a literate and educated man as to exercise his vote properly; I should say such a qualification is unnecessary....

I support the formal amendments moved by my Friend Dr. Ambedkar and oppose the amendments moved by Mr. Karimuddin and Mr. Baig and also by Prof. Shah.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, sir, I accept the amendments Nos. 1417, 1426, 1431 of Prof. Shah, 1434 as amended by the mover of that amendment and as amended by the amendment No. 42 of List II and No. 43 of List II. Of the other amendments, on a careful examination, I find that there is only one amendment on which I need offer any reply. That is amendment No. 1415 of my friend Mr. Karimuddin. His amendment aims at prescribing that the election to the House of the People in the various States shall be in accordance with the propotional representation by single transferable vote. Now, I do not think it is possible to accept this amendment, because, so far as I am able to Judge the merits of the system of

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*CAD, Vol. VII, 4th January l949, p. 1239.

† *Ibid.,* pp. 1261-63.

proportional representation, in the light of the circumstances as they exist in this country, I think, that amendment cannot be accepted. My Friend Mr. Karimuddin will, I think, accept the proposition that proportional representation presupposes literacy on a large scale. In fact, it presupposes that every voter shall be literate, at least to the extent of being in a position to know the numericals, and to be in a position to mark them on a ballot paper. I think, having regard to the extent of literacy in this country, such a presupposition would be utterly extravagant. I have not the least doubt on that point. Our literacy is the smallest, I believe, in the world, and it would be quite impossible to impose upon an illiterate mass of voters a system of election which involves marking of ballot papers. That in itself, would, T think, exclude the system of proportional representation.

The second thing to which I like to draw the attention of the House is that at any rate, in my judgment, proportional representation is not suited to the from of Government which this constitution lays down. The form of Government which this constitution lays down is what is known as the parliamentary system of Government, by which we understand that a government shall continue to be in office not necessarily for the full term prescribed by law, namely, five years, but so long as the Government continues to have the confidence of the majority of the House. Obviously it means that in the House where there is the parliamentary system of government, you must necessarily have a party which is in majority and which is prepared to support the Government. Now, so far as I have been able to study the results of the systems of parliamentary or proportional representation. 1 think, it might be said that one of the disadvantages of proportional representation is the fragmentation of the legislature into a number of small groups. I think the House will know that although the British Parliament appointed a Royal Commission in the year 1910, for the purpose of considering whether their system of single-member constituency, with one man one vote, was better or whether the proportional representation system was better, it is, I think, a matter to be particularly noted that Parliament was not prepared to accept the recommendations of that Royal Commission. The reason which was given for not accepting it was, in my judgement, a very sound reason, that proportional representation would not permit a stable government to

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remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament, they would, on that occasion, withdraw their support from the government, with the result that the Government losing the support of certain groups and units, would fall to pieces. Now, I have not the least doubt in my mind that whatever else the future government provides for, whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely, it must maintain a stable Government and maintain law and order. (*Hear, hear*). I am therefore, very hesitant in accepting any system of election which would damage the stability of Government. I am therefore, on that account, not prepared to accept this arrangement.

There is a third consideration which I think, it is necessary to bear in mind. In this country, for a long number of years, the people have been divided into majorities and minorities. I am not going into the question whether this division of the people into majorities and minorities was natural, or whether it was an artificial thing, or something which was deliberately calculated and brought about by somebody who was not friendly to the progress of this country. Whatever that may be, the fact remains that there have been these majorities and minorities in our country; and also that, at the initial stage when this Constituent Assembly met for the discussion of the principles on which the future constitution of the country should be based, there was an agreement arrived at between the various minority communities and the majority community with regard to the system of representation. That agreement has been a matter of give and take. The minorities who, prior to that meeting of the Constituent Assembly, had been entrenched behind a system of separate electrorates, were prepared, or became prepared to give up that system and the majority which believed that there ought to be no kind of special reservation to any particular community permitted, or rather agreed that while they could not agree to separate electorates, they would agree to a system of joint electorates with reservation of seats. This agreement provides for two things. It provides for a definite quota of representation to the various minorities, and it also provides that such a quota shall be returned through joint electorates. Now, my submission is this, that while it is still open to

this House to revise any part of the clauses contained in this draft constitution and while it is open to this House to revise any agreement that has been arrived at between the majority and the minority, this result ought not to be brought about either by surprise or by what I may call, a side-wind. It had better be done directly and it seems to me that the proper procedure for effecting a change in articles 292 and 293 would be to leave the matter to the wishes of the different minorities themselves. If any particular minority represented in this House said that it did not want any reservation, then it would be open to the House to remove the name of that particular minority from the provisions of article 292. If any particular minority preferred that although it did not get a cent per cent deal, namely, did not get a separate electorate, but that what it has got in the form of reservation of seats is better than having nothing, then I think it would be just and proper that the minority should be permitted to retain what the Constituent Assembly has already given to it.

Pandit Thakur Dass Bhargava : But there was no agreement about reservation of seats among the communities and a number of amendments were moved by several Members for separate electorates and so on, but they were all voted down. There was no agreement at all in regard to these matters.

The Honourable Dr. B.R. Ambedkar : I was only saying that it may be taken away, not by force, but by consent. That is my proposition, and therefore, I submit that this proportional representation is really taking away by the back-door what has already been granted to the minorities by this agreement, because proportional representation will not give to the minorities what they wanted, namely, a definite quota. It might give them a voice in the election of their representatives. Whether the minorities will be prepared to give up their quota system and prefer to have a mere voice in the election of their representatives, I submit, in fairness ought to be left to them. For these reasons, Sir, I am not prepared to accept the amendment of Mr. Karimuddin.

Mr. Vice-President: I shall now put the amendments, one by one, to the vote of the House.

Shri H. J. Khandekar : On a point of information, Sir, may I ask Dr. Ambedkar, what about the preceding census. He has not said anything when he amended article 35 the other day. About the preceding

census, is he prepared to amend it by saying 'the latest census' ?

Mr. Vice-President: Mr. Khandekar may come to the rostrum and speak.

The Honourable Dr. B. R. Ambedkar: I have accepted the amendment of Mr. Naziruddin Ahmad as amended by him and as amended by Shri Bhargava.

[In all 8 amendments were negatived. Following amendments were adopted.]

[1] " That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the states directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

[2] " That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

[3] " That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

[4] " That with reference to amendment No. 1434 of the List of amendments, in sub-clause (c) of clause (5) of article 67, for the words ' members to be elected at any time for ', the words 'representatives allotted to' be substituted."

[5] " That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census' the words 'last preceding census of which the relevant figures have been published' be substituted."

[6] " That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the words 'the territories' and for the words 'other than States' the words 'directly governed by the centre on the same basis as in the case of states which are constituent parts of the Union' be substituted respectively."

[7] "That with reference to amendment No. 1450 of the List of amendments, after clause (8) of article 67, the following new proviso be inserted :—

'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House'."

[8] "That to article 67, the following new clause (10) be added :—

'(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of a single transferable vote."

Article 67, as amended, was added to the Constitution.

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ARTICLE 147-A

***Mr. Vice-President :** Dr. Ambedkar will reply to the amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I oppose the amendment, and all that I need say is this, that the basic principle of the amendment is so fundamentally opposed to the basic principles on which the Draft Constitution is based, that I think it is almost impossible now to accept any such proposal.

Mr. Vice-President : I am now going to put the amendment to vote. The question is :

"That before article 14X, the following new article 147-A be added :—

"147-A. The legislature of every state shall be wholy separate from independent of Executive or the Judiciary in the State'.

[This amendment of Prof. K. T. Shah was negatived.]

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* CAD, Vol. VII, 6th January 1949, p. 1304.

ARTICLE 148

Mr. Vice-President : There is an amendment to this amendment—No. 46 of List 11, standing in the name of Dr. Ambedkar. Is the Honourable Member going to move it 7

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That for amendment No. 2231 of the List of Amendments, the following be substituted:—

'That in sub-clause(a) of clause (1) of article 148, after the words 'in the states of' the words 'Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab' be inserted'."

Sir, I should like to state to the House that the question of whether to have a second chamber in the provinces or not was discussed by the Provincial Constitution Committee, which was appointed by this House. The decision of that Committee was that this was a matter which should be left to the decision of each province concerned. If any particular province decided to have a second chamber it should be allowed to have a second chamber : and if any particular province did not want a second chamber, a second chamber should not be imposed upon it. In order to carry out this recommendation of the Provincial Constitution Committee it was decided that the Members in the Constituent Assembly, representing the different provinces should meet and come to a decision on this issue. The Members of the different provinces represented in this Assembly therefore met in groups of their own to decide this question and as a result of the deliberations carried on by the Members it was reported to the office that the provinces which are mentioned in my amendment agree to have a second chamber for their provinces. The only provinces which decided not to have a second chamber are the C. P. & Berar, Assam and Orissa. My amendment gives effect to the results of the deliberations of the representatives of the different provinces in accordance with the recommendation of the Provincial constitution committee.

Sir, I move:

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†Mr. Vice-President: Dr. Ambedkar.

Shri H. V. Kamath (C.P. & Berar: General) : Mr. Vice-President

Mr. Vice-President: Mr. Kamath comes from the C. P. which has no upper chamber. (*Laughter*.)

Shri H. V. Kamath : That is exactly. Sir, why I would like to speak.

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*CAD, Vol. VII, 6th January 1949, p. 1309.

† *Ibid.,* pp. 1316-17.

Mr. Vice-President: I think the point has been sufficiently discussed. Some four more Honourable Members would probably like to speak, but we have already spent one and a half hours, and we have to make a definite progress every day. I offer my apologies to those gentlemen who have been disappointed; that is all I can offer in the present circumstances. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret I cannot accept any of the amendments that have been moved to this particular article. I find from the speeches that have been made that there is not the same amount of unanimity in favour of the principle of having a second chamber in the different provinces. I am not surprised at the views that have been expressed in this House against second chambers. Ever since the French Constituent Assembly met, there has been consistently a view which is opposed to second chambers. I do not think the view of those who are opposed to second chambers can be better put than in the words of Abbe Seiyes. His criticism was two-fold. He said that if the upper House agreed with the lower one, then it was superfluous. If it did not agree with the lower House, it was a mischievous body and we ought not to entertain it. (*Laughter*). The first part of the criticism of Abbe Seiyes is undoubtedly valid, because it is so obvious. But nobody has so far agreed with the second part of the criticism of Abbe Seiyes. Even the French nation has not accepted that view; they too have consistently maintained the principle of having a second chamber.

Now, speaking for myself, I cannot say that I am very strongly prepossessed in favour of a second Chamber. To me, it is like the Curate's egg-good only in parts. (*Laughter*.) All that we are doing by this Constitution is to introduce the second chamber purely as an experimental measure. We have not by the draft Constitution, given the second chamber a permanent place, we have not made it a permanent part of our Constitution. It is a purely experimental measure, as I said, and there is sufficient provision in the present article 304 for getting rid of the second chamber. If, when we come to discuss the merits of article 304 which deals with the abolition of the second chamber, Honourable Members think that some of the provisions contained in article 304 ought to be further relaxed so that the process of getting rid of the second chamber may be facilitated. Speaking for myself, I should raise no difficulty (*Hear, Hear*), and I therefore suggest to the House, as a sort of compromise, that this article may be allowed to be retained in the Constitution.

Mr. Vice-President: I am now going to put the amendments to vote, one by one. The question is—

"That for amendment No. 2231 of the List of Amendments, the following be substituted :—

"That in sub-clause (a) of clause (1) of article 148, after the words 'in the State of' the words 'Madras, Bombay, West bengal, the United Provinces, Bihar and East Punjab' be inserted.' "

[The amendment of Dr. Ambedkar was adopted. Two more amendments were negatived.]

Article 148, as amended, was adopted and added to the constitution.

ARTICLE 149

***Mr. Vice-President:** Then we come to article 149. ...Amendment No. 2241 may be moved. It stands in the name of Dr. Ambedkar.

An Honourable Member: It is not being moved. (Voices: 'member not in the House' (*Laughter.*)

Mr. Vice-President : (Seeing the Honourable Dr. Ambedkar coming into the Chamber) Honourable Members are at perfect liberty to go out to take a cup of coffee or have a smoke. They will kindly realise the difficulties of those who are accustomed to both these types of relaxation. Honourable Members will agree that Dr. Ambedkar is entitled to relaxation of that sort. The Chair has nothing to do but to listen to the debates, but Dr. Ambedkar has to listen to the debates and reply. (*Laughter.)*

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†**Mr. Vice-President :** ...Shall we now go on to amendment No. 2250, standing in the name of Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Not moving.

Mr. Vice-President: In that case amendment No. 59 in List III, falls through.

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‡**The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move:

"That for the proviso to clause (3) of article 149, the following be substituted :—

'Provided that where the total population of a state as ascertained at the last preceding census exceeds three hundred lakh s, the number of members in the Legislative Assembly of the State shall be on a scale of not more than one member for every lakh of the population of the State up to a population of three hundred

*CAD, Vol. VII, 6th January 1949, p. 1318.

†*Ibid.,* p. 1323.

‡*Ibid., p.* 1324.

lakhs and not more than five members for every complete ten lakh; of the population of the state in excess of three hundred lakhs :

Provided further that the total number of members in the Legislative Assembly of a state shall in no case be more than four hundred and fifty or less than sixty'."

***Mr. Vice-President :** So much goodwill has been shown to me by the House, so much kindness is bestowed on me that I suggest that I do not call upon Dr. Ambedkar to make his reply today but that we pass on the some other business, so that all the parties concerned may have an opportunity of putting their heads together and arriving at an agreed solution. After all, framing the Constitution is a co-operative effort and we must do all that we can to make it a success.

Some Honourable Members : Thank you. Sir.

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ARTICLE 63

Mr. Vice-President : There are number of amendments to that amendment.

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†Shri Prabhudayal Himatsingka (West Bengal : General)**:** Sir, I beg to oppose the amendments moved by Mr. Naziruddin Ahmad and Prof. K. T. Shah. The article as it stands is what should be accepted by the House. There is certainly difference between the Advocate-General of a province and the Attorney-General of India. Sub-clause (4) provides that the Attorney-General shall hold office at the pleasure of the President and I think that should serve the purpose. If there is a change in the Ministry that necessarily need not mean the going out of office of the Attorney-General also, but in the provinces with the change of ministry the Advocate-General should be required to retire unless he is appointed again. Therefore, I oppose the amendments moved and I support the article as it stands.

Mr. Vice-President: Dr. Ambedkar.

Mr. Naziruddin Ahmad : He has not listened. He is getting his instructions. Sir.

Mr. Vice-President: That is hardly a charitable remark to make.

Mr. Naziruddin Ahmad : It is not. I am forced to make the remark, Sir.....

Mr. Vice-President: Will the Honourable Member kindly resume his seat ?

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Sir, I do not know whether any reply is necessary.

[All the amendments were negatived and Article 63 was added to the Constitution.]

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*CAD. Vol. VII, 7th January 1949, p. 1349.

† *Ibid.,* p. 1347.

ARTICLE 64

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***Shri Raj Bahadur** (United State of Matsya)**:** Mr. Vice-President, Sir, I come here to oppose the amendment that has been moved by Prof. K. T. Shah. From the various amendments that he has been moving from time to time, I am led to think that he is moving according to a set plan and that he wants the Presidential system of constitution instead of the Parliamentary system of democracy for the country. But, with all respect to his erudition and experience, I see that he has not been consistent even in that. When we discussed article 42, by which the entire executive power of the Union is vested in the President, he himself moved two amendments. Nos. 1040 and 1045 to that article and one of his amendment reads as follows :—

> "The sovereign executive power and authority of the Union shall be vested in the President, *and shall be exercised by him* in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being."

By implication it means obviously that all executive actions should be taken by and in the name of the President, which is exactly the import, meaning and the implication of article 64, under discussion. I therefore, fail to see any reason for Prof. K. T. Shah to go now behind the terms of his own amendment, which he moved to article 42. What we mean clearly enough is that the entire executive power of the Union vests in the President and all governmental orders, and instruments shall be made in the name of the President. It is no anomaly and no inconsistency under any known democratic principles to get the orders issued in the name of the President and as such, I submit, there is no reason for the house to accept the amendment which has been moved by Prof. Shah.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, sir, I do not think any reply is called for.

[Two amendments were negatived. None was adopted. Article 64 was adopted and added to the Constitution.]

ARTICLE 65

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†Mr. Vice-President: There is only one amendment now before the House and the clause is open for general discussion. Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : No, Sir, I do not accept Mr. Kamath's amendment.

The amendment was negatived.

Article 65 was added to the Constitution.

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*CAD, Vol. VII, 7th January 1949, p. 1352.

† *Ibid., p.* 1354.

MOTION *re* PREPARATION OF ELECTORAL ROLL

***Mr. Vice-President:** Dr. Ambedkar.

May I suggest that you read the resolution in the accepted form before you reply ?

The Honourable Dr. B. R. Ambedkar : Yes; I will indicate the changes that I am going to accept.

Shri Deshbandhu Gupta : May I know, Sir, before Dr. Ambedkar proceeds to reply whether you have given any ruling on the point of order raised by me. I had raised a point of order that, unless the word "already" goes, tills resolution will be of no use because article 149 .....

Mr. Vice-President: I think the word "already" has already been omitted.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, with your permission, I propose to reply to the debate on behalf of the mover of the resolution was Mr. Vice-President. of this resolution.

Before I proceed to deal with the detailed amendments, I should like to propose myself certain amendments in the Resolution as was moved by the Mover.

The first amendment that I propose is, to delete the word "already" from paragraph 2.

My second amendment is to delete clause (a) from sub-clause (1), and delete also the letter and brackets "(b)" in the beginning of the second sub-clause, so that sub-clause (1) will read thus :

> "That no person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court."

Then, in paragraph (4), I propose to make the following amendments. For the words "subject to the law of the appropriate legislature" in line of that paragraph, my amendment would be "notwithstanding anything in paragraph (3) above". In line 5 of that paragraph, for the words "a constituency", substitute the words "an area".

These are my amendments. I shall briefly explain my amendments. The amendment which I have moved to drop the word "already" meets

the points of order that was raised by Shri Deshbandhu Gupta.

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The Honourable Dr. B. R. Ambedkar : Sir, as I said, it is quite true that the word "already" raises the complications which Mr. Deshbandhu Gupta mentioned and it is only right that his objection should be removed by the deletion of the word "already".

*CAD. Vol. VII. 8th January 1949, pp. 1382-86.

With regard to the second amendment dropping clause (1), it seems to be quite unnecessary, because, the purport of that clause is embodied in paragraphs (3) and (4).

With regard to my next amendment to substitute the words "notwithstanding anything in paragraph (3) above" for the words "subject to the law of the appropriate legislature", my submission is that the original words were really unnecessary and inappropriate in a clause of that sort. Sub-clause (4) is really an exception to clause (3). That matter has been cleared by my amendment.

With regard to the word "constituency" I have substituted the word "area" in order to meet the criticism that at the stage when the rolls are prepared, there are no constituencies and all that a man can indicate is an area, not a constituency, because, constituencies are not supposed to be in existence then.

My amendment for the addition of the words "or makes" meets the criticism that has been made that there are many people who are illiterate, who may not be in a position to sign an application and file it before a particular officer. The addition of the words "or makes" permits an oral declaration to be made either before a district Matistrate or before an officer who is preparing the electoral rolls. I think that objection is fairly met.

I will now take into consideration the other amendments which have been moved to this resolution.

Shri L. Krishnswami Bharathi : May I suggest one amendment to the Mover that his reason for amending ' constituency 'in part, (4)

Mr. Vice-President: You cannot tell it to the House. You can tell it to Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I am prepared to make the necessary consequential changes. As I said, I will turn to the other amendments and I take the amendment of my friend Mr. Tyagi. If I understood him correctly he had no objection to the resolution in its general terms. What he wanted was that the details should be deleted. It seems to me that the position taken by my Friend Mr. Tyagi indicates that he has confusion in his mind about what the objective or the aim of the Resolution is. The aim of the Resolution is merely to make a declaration that it is the intention of this Assembly that as far as possible, election may be held sometime in 1950 but the object of the Resolution is to convey some positive directions to the authorities in charge of preparing the electoral rolls which is the basis of all elections. It would be futile and purposeless merely to make a declaration that this

Constituent Assembly desires that the election should take place in the year 1950 without giving the directions to the authorities concerned in the matter of preparing the electoral roll. Because unless the electoral rolls are prepared in time sufficiently before the date of the election, no election can take place at all. The second part of the resolution contains directions to the various authorities and unless the directions are embodied in the resolution, the Resolution is merely a pious declaration which means nothing. It is setting out an objective without setting out the methods and the instruments by which that objective can be carried out and I think my friend Mr. Tyagi will understand that really speaking the part of the resolution which he wants to omit is more important than the part of the Resolution which he wants to retain. Now I come to the amendment of my friend Mr. Hanumanthaiya.

Shri Mahavir Tyagi : What is your view about the word 'already' ?

The Honourable Dr. B. R. Ambedkar : I have already said that I would delete it. Coming to the amendment of Mr. Hanumanthaiya, he wants to omit the words 'in the year 1950'. His argument has a good deal of sense behind it, because according to him if this constituent assembly were to make this declaration by this Resolution fixing 1950 as a target and if for some reason, either connected with the preparation of electoral rolls or some other circumstances, it becomes impossible to have elections in 1950, the assembly would be placed in a somewhat difficult position. The Assembly might be accused of treating this as a trifling matter when as a matter of fact it is of great substance. But at the same time in view of what the Mover of the Resolution said that there is a certain amount of feeling in the country that we are not going as fast as we ought to in the passing of this Constitution, that our procedure is more leisurely, more dilatory and that is due to our not being very serious in having an early election, it is to remove that sort of feeling in the country that it is necessary to fix some target date and it is from that point of view that the retention of the words 'in the year 1950' becomes necessary. Of course, if reasons justified the postponement of the date, it would but be necessary for the Assembly to postpone the date of elections; and I am sure about it that if the Assembly is in a position to place before the country grounds which are substantial and which are not mere excuses the country will no doubt understand the change and the postponement of the date.

Now my friend Mr. Saksena wants that instead of the 1st Jan. 1949 the date 1st January 1950 be substituted. Mr. Bhargava wants that for 31st March 1948, the date 31st March 1949 be substituted. Now having regard to what has already been done, it is not possible to accept either of these amendments. Mr. Saksena's amendment, if I understood him correctly, has the object that there ought not to be a considerable time lag between the date on which the electoral roll is prepared and the date on which election is held. In other words, the electoral roll must not be very stale and out-of-date. Now it seems to me that if our election is going to take place in 1950, the electoral roll which is prepared on the basis of the voter's qualification as his being an adult on 1st January 1949 cannot, by any stretch of imagination, be deemed to be a stale roll. My Friend Mr. Saksena must be aware of the fact that all electoral rolls generally lag behind the date of election by one year.

Prof. Shibban Lal Saksena: It will become two years old !

The Honourable Dr. B. R. Ambedkar : Therefore if persons who are entitled to be voters in the electoral rolls on the basis of their single solitary qualification which we have, viz., his being a man of 21 years of age on the 1st January 1949 and if the election takes place in the year 1950 on some date not possible to prescribe, I think it cannot be said that the electoral roll will be a stale roll.

Now I am coming to the amendment of Pandit Bhargava. He wants that the date of 31st March 1949 be substituted. It is not possible to accept that amendment because in the expectation of the election taking place in the year 1950, instructions were already issued to the various Provincial Governments on the 1st March 1948 to proceed to prepare the electoral rolls on the basis of adult suffrage. It seems to me that if we accept the amendment of Pandit Bhargava, we shall have to waste all the work that has already been done by Provincial Governments on that basis. I do not think there will be any waste of work already done, because all those who on the 1st January, 1948 would be adults, would be added on to the roll that has already been prepared.

The Honourable Shri K. Santhanam: Is it not necesary also to change the date 1st January 1949 to 31st March 1948, in sub-para. (2) ?

The Honourable Dr. B. R. Ambedkar : No. I do not think so.

Now, I come to the amendment of my friend Mr. Chaudhari. It seems to me that he is asking for something which is quite impossible, if

not ridiculous. He says that every person who is of unsound mind should be deprived of his vote. We all agree that unsound persons should not be included in the voters' list. But the question remains as to who is to determine whether a person is of unsound mind or not. It seems to me that unless the qualification which is introduced in this motion says that a person can be excluded from the electoral roll only when he has been adjudged to be of unsound mind by some impartial judicial authority, seems to be the soundest proposition. Otherwise, to give the authority to a village Patwari not to enter a certain person in the electoral roll because he thinks that he is of unsound mind is really to elevate a cabin boy to the position of the captain of a ship, and I think it is not possible to accept such an amendment.

My friend Mr. Kamath raised some question with regard to a clause that was passed the other day, in which in addition to unsoundness of mind, certain other disqualifications were mentioned, particularly those relating to crime.

Shri Deshhandhu Gupta : Will all the inmates of lunatic asylums be included in the electoral rolls, in the first instance ?

The Honourable Dr. B. R. Ambedkar : I do not know the case of other provinces, but so far as Bombay is concerned, unless the Chief Presidency Magistrate declares a person to be of unsound mind no lunatic asylum would admit him.

Mr. Vice-President: Yes, that is the case in Bengal.

The Honourable Dr. B. R. Ambedkar : And it seems to be the case in Bengal also. It is there in the Lunacy Act.

Now, with regard to the question of crime all that I need say is this that the Drafting Committee, in using the word 'crime' in that particular article was merely reproducing the provision contained in the Sixth Schedule of the Government of India Act, and I do not think that the Drafting Committee had anything more in mind than what is stated in that article. According to that article, the commission of a crime is not by itself any disqualification. The disqualification is only when a person is punished and detained in imprisonment. It is during the period of imprisonment that he loses the right to vote. That point can be further accommodated when we come to the additional disqualifications mentioned in the article to which Mr. Kamath referred.

Shri H. V. Kamath : Am I to understand that grounds of crimes, corrupt or illegal practices etc. of which a person may be convicted in the past will not act as a disqualification or bar to his registration as a voter ?

The Honourable Dr. B. R. Ambedkar : Yes, and those will be prescribed by Parliament.

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Mr. Vice-President: I know that schoolboys on the eve of the vacation behave not always wisely.

The next amendment is that of Pandit Thakur Dass Bhargava. The question is :

"That for the words 'files a declaration' substitute *the words* 'expresses the intention'."

But this is covered by what Dr. Ambedkar has accepted.

Then his other amendment is that in paragraph 3, for the words "31st March 1948" substitute the words of 31st March 1949."

The amendment was negatived.

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Mr. Vice-President: Then we come to the amendment of Mr. Nagappa. But that is covered by Dr. Ambedkar's amendment and so it will not be put to vote.

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Mr. Vice-President: The second part has been accepted by Dr. Ambedkar and therefore need not be voted on. Then we come to the third part. But that is also covered by Dr. Ambedkar's amendment.

But he has a further amendment to the effect.

The question is :

"That the word 'permanently' in the last line of sub-para, (4) be deleted."

The amendment was negatived.

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Mr. Vice-President: Now, I put the Resolution, as amendment by Dr. Ambedkar's amendments to vote. Does the House want me to read it out ?

Honourable Members : No, no.

Mr. Vice-President: So the question is :

"That the Resolution as amended, be accepted."

* Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections

to the Legislature under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls he prepared on the basis of the provisions of the new Constitution agreed to by this Assembly and in accordance with the principles hereinafter mentioned, namely :—

(1) That no person shall be included in the electoral roll of any area if he is of unsound mine and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any area unless he has resided in that area for a period of not less than 180 days in the year ending on the 31st March 1948. For the purposes of this paragraph, a person shall be deemed to be resident in any area if he ordinarily resides in that area or has a permanent place of residence therein.

(4) That, notwithstanding anything in paragraph (3) above, a person who has migrated into a Province or according State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of an area if he files or makes a declaration of his intention to reside permanently in that area.

(Then motion, as amended was adopted.)

[The motion, as amended, was adopted 5 amendments were rejected.]

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ARTICLE 149 *(Contd.)*

***Mr. Vice-President:** Now we come to article 149. I think there has been sufficient discussion on this article and Dr. Ambedkar will now reply.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, in reply to the debate on article 149, I wish, first of all, to make clear my position with regard to my own amendment which was No. 2255. I want the permission of the House to withdraw this amendment; and in lieu of that I accept amendment No. 2249, as amended by amendment No. 48 of List II by Mr. Naziruddin Ahmad.

I also accept amendments Nos. 62 and 66 of List IV by Shri T.T. Krishnamachari, amendment No. 2252 as modified by the amendment of Mr. Bhargava and amendment No. 2263 as modified by amendment No. 67 of Shri Shibban Lal Saksena,

Now, Sir, so far as the general debate on the article is concerned, it seems to me that there are only two points that call for reply. The first point is with regard to the census figures to be adopted for the purpose of the new elections. A great deal of argument was concentrated

*CAD, Vol. VII, 8th January 1949, pp. 1387-89.

by many speakers on the fact that the census in certain provinces is not accurate and does not represent the true state of affairs so far as the relative proportions of the different communities are concerned. I think there is a great deal of force in such arguments and, if I may say so, there is enough testimony which one can collect from the Census Commissioners' reports themselves to justify that criticism. I had intended to refer to the statements made by the Census Commissioners on this issue. But, as there is no time, I think I had better not refer to them. Further, the large majority of the members who have spoken on this subject know the facts better than I do. I only want to add one thing and that is that if any people have suffered most in the matter of these manipulations of census calculations by reason of political factors, they are the Scheduled Castes (*Hear, Hear*). In Punjab for instance, the other communities are trying to eat up the Scheduled Castes in order to augment their strength and to acquire larger representation in the legislature for themselves. These poor people who have been living mostly as landless labourers in villages scattered here and there, with no economic independence, with no support form the authorities,—the police or the magistracy,—have been, by certain powerful communities, either compelled to return themselves as members of that particular community or not to enumerate at the elections at all. The same thing has happened to a large extent, I know, in Bengal. For some reason which I have not been able to understand, a large majority of the Scheduled Castes there refused to return themselves as Scheduled Castes. That fact has been noted by the Census Commissioners themselves. I therefore completely appreciate the points that have been made by various members who spoke on the subject that it would not be fair to take the figures of that census.

An Honourable Member: What about Assam ?

The Honourable Dr. B. R. Ambedkar: It may be true of Assam also. I am not very well acquainted with it. As I said I fully appreciate the point that to take those census figures and to delimit constituencies or allocate seats between the different constituencies and between the majority and minority communities would not be fair. Something will have to be done in order to see that the next election is a proper election, related properly to the population figures of the provinces as well as

of the communities. All that I can do at this stage is to give an assurance that I shall communicate these sentiments to those who will be in charge of this matter and I have not the least doubt about it that the matter will be properly attended to.

Sir, if the Members who are interested in it are not satisfied with the assurance that I am giving now, they can at some stage—it is not possible to do it now—move an amendment to article 149 permitting the President to have an interim census, if he deems it necessary taken for the purpose of removing the grievances to which they have referred. In fact, I have with me a draft which might be considerd at a later date. Some such draft like this may be considered : "Provided further that the initial representation of the several territorial constituencies of the legislative assembly of any State may be determined in such other manner as the President may by order direct." That would be general enough and would deal with the difficulty which has been pointed out.

An Honourable Member : Why do you not move it now ?

The Honourable Dr. B. R. Ambedkar : There is no time for it now. If Members are not prepared to rely upon the assurance given by me some such motion may be moved at the appropriate stage.

With regard to the point raised by my honourable friend Prof. Saksena in amendment No. 64, I may say that I whole heartedly support it. I think the proviso he has sought to introduce is a very necessary one. The House will remember that it deals with weightage in representation. We have, in this Constitution, eliminated all sorts of weightages. Weightage to all minorities we have eliminated. Weightage to territories in the representation in the Central Legislature we have eliminated. Weightage between representatives in British India and representatives of Indian States we have eliminated. I think therefore that it is only right that the same principle should apply to representation in legislatures. I therefore accept that amendment.

Sir, I do not think there is any other point worthy of consideration or calling for reply. I therefore recommend to the House the acceptance of article 149, as amended.

Mr. Vice-President: I am now going to put the amendments to vote one by one.

* * * * *

Mr. Vice-President: Amendment No. 48 of List II. The question is :

"That for amendment No. 2249 of the List of Amendments, the following be substituted :—

'That in clause (3) of article 149, for the words "last preceding census" the words "last preceding census of which the relevant figures have been published " be substituted'."

Following amendments were adopted by the House :

(1) That with reference to amendments Nos. 2249 and 2250 of the list of amendments in clause (3) of article 149, for the words 'every lakh' the words 'every seventy-live thousand' be substituted."

(2) "With reference to amendment No. 2252 of the list of Amendments, after the words 'autonomous districts of Assam' the words and the constituency comprising the cantonment and municipality of Shillong' be added.

(3) "With reference to amendments Nos. 2256, 2257 and 2258 of List of Amendments, in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'five hundred' be substituted."

(4) "That after clause (3) of article 149, the following New Clause be inserted :—

'(3-a) The ratio between the number of members to be alloted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as particable, be the same throughout the State'."

The amendment was adopted.

(Article 149, as amended was added to the Constitution.)

[The assembly then adjourned till Monday the 16th May 1949.]

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SECTION FIVE

Clausewise Discussion

16th May 1949 to 16th June 1949

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Draft Constitution

ARTICLE 67-A

***Mr. President:** ...We shall now proceed to the consideration of the Draft Constitution. The House dealt with articles up to 67. We shall now proceed further. The Steering Committee was of the opinion that we might adopt the articles dealing with election matters first. That is, I think, the wish of this House also. But I understand that it will not be possible to proceed with those articles today and we can take them up from tomorrow. Today we begin with article 68 and such articles only dealing with election matters as fall within today's discussion, and those that come later will be taken up tomorrow.

There is one article of which notice has been given by way of amendment, *i.e.,* 67-A. It will be taken up first.

NEW ARTICLE 67-A

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I move :

> " That after article 67, the following new article be inserted :—
>
> 67-A. (1) The President may nominate persons not exceeding three in number to assist and advise the Houses of Parliament in connection with any particular Bill introduced or to be introduced in either House of Parliament.
>
> (2) Every person so nominated in connection with any particular Bill shall, in relation to the said Bill, have the right to speak in, and otherwise to take part in the proceedings of either House and any joint sitting of the Houses of Parliament and any Committee of Parliament of which he may be named a member, but shall not, by virtue of such nomination, be entitled to vote nor shall he be entitled to speak in or otherwise to take part in the proceedings of either House or any joint sitting of the Houses or any Committee of Parliament in relation to any other matter.' "

Sir, the necessity for this article being inserted in the Constitution is this : The House will remember that the composition of the Upper Chamber was originally set out in paragraph 14 of the report of the Union Constitution Committee. In that paragraph it was stated that the Drafting Committee should adopt as its model the Irish system nominating fifteen members of the Upper Chamber out of a panel

* CAD, Official Report, Vol. VIII, 18th May 1949. pp. 82-83.

constituted by various interests such as science, literature, agriculture, engineering and so on. When the Drafting Committee took up this matter, Sir, B. N. Rau, who had in the meanwhile gone on tour, had a discussion with Mr. De Valera and the other members of the Irish Government as to how far this system which was in operation in Ireland had been a successful thing, and he was told that the panel system had completely failed with the result that the Drafting Committee decided to drop the provision suggested in paragraph 14 of the report of the Union Constitution Committee, and proposed a simple measure, *viz.,* to endow the President with the authority to nominate fifteen persons to the Upper Chamber representing special knowledge or practical experience in science, literature and social services. After the Drafting Committee had prepared this draft, the matter was again reconsidered by the Union Constitution Committee and at this session of the Union Constitution Committee, the Committee proposed that the total number of nominations which was originally restricted to fifteen should be divided into two classes, *viz.,* that there should be a set of people nominated as full members of the House and they should have special knowledge and practical experience in art, science, literature and social services and that three other persons should be nominated as experts to assist and advise Parliament in the matter of any particular measure that the Parliament may be considering at the moment.

The first part of the recommendation of the second session, if I may say so, of the Union Constitution Committee has already been incorporated in article 67 which has already been passed by the Assembly. It is to give effect to the second part of the recommendation of the Union Constitution Committee that this article is proposed to be introduced in the Constitution. Honourable Members will see that this article limits the functions of the members nominated thereunder. The functions are to assist and advise the Houses in a particular measure that may be before the House; in other words, the members who would be nominated under article 67-A, their term and their duration will be co-terminous with the proceedings with regard to a particular hill in relation to which they are nominated by the President to advise and assist the House.

From the second paragraph of article 67-A it will be noticed that they are only entitled to take part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which

they are nominated by the House as members thereof; but they are not entitled to vote at all, so that the addition of these three members will certainly not affect the voting strength of the House. I am sure that the House will accept this new provision contained in article 67-A. If I may point out to the House, the provision contained in article 67-A of nominating experts to the House is not at all a new suggestion. Those members of the House who are familiar with the provisions of the Government of India Act of 1919 know when it introduced a popular element in the House, it also contained a provision which empowered the Governors of the different provinces to appoint experts to deal in a particular manner when the House is considering such a measure. I think it is a useful provision and it would do a lot of good if such a provision was introduced in the Constitution.

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***Mr. President:** The suggestion is that this thing was not circulated before and Members wish to have time.

The Honourable Dr. B. R. Ambedkar : I have no objection if the House wants that the consideration of this matter be postponed.

Mr. President: We shall postpone it today and we shall take it up later.

ARTICLE 68

Mr. President: The motion is :

"That article 68 form part of the Constitution."

We shall now take up the amendments to this article.

(Amendments Nos. 1453 and 1454 were not moved.)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmad. I think that is a verbal amendment. Will you like to move it ? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consutaltion with the Members who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

*CAD, Vol. VIII, 18th May 1949, p. 84.

The Honourable Dr. B. R. Ambedkar : The Drafting Committee may be very glad to follow that procedure.

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***The Honourable Dr. B. R. Ambedkar :** Sir I move :

"That in the proviso to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be substituted."

It is not necessary to offer any explanation for the amendment which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

Mr. President : Amendment No. 1465 : that is covered by Dr. Ambedkar's amendment. It is not necessary to take it up.

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†The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I do not think that anything has been said in the course of the debate on my amendment No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. Shah, I think some of the difficulties which arise from it, have already been pointed out by my friend Mr. T.T. Krishnamachari. Election, after all, is not a simple matter. It involves a tremendous amount of cost and I think it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short periods. I quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time, I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment which prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

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*CAD, Vol. VIII, 18th May 1949, p. 85.

†*Ibid.,* p. 88.

Mr. President : Then I put the whole article as amended by Dr. Ambedkar's amendment.

The question is :

"That article 68, as amended, stand part of the Constitution."

The Motion was adopted. Article 68 as amended was added to the Constitution.

ARTICLE 68-A

***Mr. President:** Now I come to the new article sought to be put in article 68-A. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I beg to move:

" That the following new article be inserted after article 68 :—

' 68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.' "

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

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†Shri T. T. Krishnamachari : ...Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that

*CAD, Vol. VIII, 18th May 1949, p. 89.

†*Ibid.,* p. 94.

these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amended by Shrimati Durgabai's amendment.

The Honourable Dr. B. R. Ambedkar: I am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President: Do you wish to reply ?

The Honourable Dr. B. R. Ambedkar: I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty-five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further still it is open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President: I will now put the amendment to vote

[Following amendment of Smt. Durgabai was adopted.]

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

Article 68-A as amended was added to the Constitution.

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ARTICLE 69

***The Honourable Dr. B. R. Ambekar:** Sir, I regret that I cannot accept any of the amendments which have been moved to this article. I do not think that any of the amendments except the one which I have chosen now for my reply calls for any comment. The amendments moved by Prof. Shah raise certain points. His first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in

*CAD, Vol. VIII, 18th May 1949. pp. 104-07.

the Government of India Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere which prevails now. The atmosphere which was then prevalent in 1935 was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals, both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpellation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the name) where the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajamul Husain : Who was responsible for that ?

The Honourable Dr. B. R. Ambedkar : As I was going to explain the same, mentality which prevailed in the past of the executive not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru : Which province was it ?

The Honourable Dr. B. R. Ambedkar : You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a tiling happended as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities which the law had given it to improve the administration either by questions or by legislation was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable

as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is, if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration : it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies. Again, there may be a further reason which may compel the executive to summon the legislative more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons which I have mentioned there is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shall wants to omit the words " either House " from clause 67 (2) (a). I could not understand Ms argument. He seemed to convey the impression—he will correct me if I am wrong—that because the Upper Chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years; but the summoning of that House for transacting business is a matter that still remains. The House is not going to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and

the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in the case of the Lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the Legislature where the President has failed to perform his duty must be vested either in the Speaker of the Lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if he have understood it correctly, the proposition of Prof. K. T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got a very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K.T. Shah. Suppose for instance the President for good reason does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen ? If the President does not summon the Legislature it means that the Executive Government has no business which it can place before the House for transaction. Because, that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making

proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment No. 1482 moved by Prof. K. T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writting for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the house should be dissolved and a case where the Prime Minister writes a letter stating that the house should be dissolved. Professor K. T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K. T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it, the King has a right to dissolve Parliament. He generally dissolves it on the advice of the Prime Minister, but at one time, certainly at the time, when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this : it was agreed by all politicians that, according to the convention then understood; the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition, if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the house may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the house if he was prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration, he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that

there should be dissolution or whether the House aggrees that the affairs should he carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would, as a Constitutional President, undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seems to be useless and not worth the paper on which it is written. There are other ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the House for *bona fide* reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the house as a whole. Therefore I do not think that this amendment should be accepted.

Mr. President: I shall now put the amendments to vote one by one.

[All amendments were rejected. Article 69 was added to the Constitution.]

ARTICLE 71

***The Honourable Dr. B. R. Ambedkar :** Prof. K. T. Shah simply wants, in the terms in which he has used, stated explicitly; what in my judgment is implicit in the phrase 'causes of its summons'. I think this phrase is wide enough to include everything that Prof. K. T. Shah wants and if I may say so, this phraseology, namely "shall address and inform Parliament of the causes of its summons" is a phrase which we find used in the British Parliament. If Prof. Shah were to refer to Campion's book on the rules of the House of Commons, he will find that this phraseology is used there and after a long and great deal of search for a proper phraseology, we are fortunate enough in finding these words in Campion and I think it is a good phrase and ought to be retained since it covers all that Prof. K. T. Shah wants. Prof. K. T. Shah said that there ought to be a provision for the President also to send messages and to otherwise address the House. I thought that there was definite provision in article 70 which we just now passed, which enables the President to address both Houses of Parliament, also to send messages and the messages may be in relation to a particular Bill or may be any other proceedings before Parliament. I do not think that anything more is

* CAD., Vol. VIII 18th May 1949, p. 110

required than what is contained in article 70 so far as the independent right of the President addressing the House is concerned and that is amply provided for in article 70. I therefore think that there is no necessity for this amendment at all.

[The only amendment of Prof. K. T. Shah was negatived. Article 71 was added to the constitution.]

ARTICLE 72

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***The Honourable Dr. B. R. Ambedkar :** Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear. I might begin by stating some simple fundamental propositions. Every House is an autonomnus House that is to say, that he will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to lake part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge of a particular Bill, and the Bill by the constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill, to enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being anacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through.

* CAD. Vol. VIII, 18th May 1949, pp. 113-14

It is for this sort of thing that article 72 is being enacted. The same applies to the Attorney-General. The Attorney-General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word 'Minister' ought to be omitted, and the word 'elected person' ought to be introduced ; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word 'Minister' and not 'person' .That is the reason why the word 'Minister' is so essential in this context. I oppose the amendment.

[Amendment of Prof. K. T. Shah was negatived and Article 72 was added to the Constitution.]

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ARTICLE 73

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****The Honourable Dr. B. R. Ambedkar*** (Bombay : General)**:** Mr. President,. Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a throughly absurd one and is based upon an utter misconception of what the clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House and obviously, that person having ceased to be

*CAD, Vol. VIII, 19th May 1949, p. 119.

a member of the House, you cannot say that they may elect 'a member' which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is 'another member' because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is 'another member'.

[Amendment of Mr. Naziruddin Ahmed was rejected. Article 73 was added to the Constitution.]

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NEW ARTICLE 75-A

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****The Honourable Dr. B. R. Ambedkar :*** Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this ; If the Chairman is being tried, so to say—I am using the popular phrase— then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause (2) of article 75 will apply. Clause (2) of article 75 says that " During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council, shall act as Chairman." Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President: The question is :

(Motion by Mr. T. T. Krishnamachari)

"That after article 75, the following new article be inserted :—

"75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such silting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.' "

The motion was adopted.

Article 75-A was added to the Constitution.

* CAD. Vol. VIII. 19th May 1949. p. 121.

ARTICLE 76

***Mr. President :** The motion is :

"That article 76 stand part of the constitution."

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Mr. Naziruddin Ahmad : I do not wish to formally move this amendment, but I want to make a few remarks. A similar amendment of mine was very kindly characterised by Dr. Ambedkar as absurd. I submit. Sir, my amendment was not absurd....

The Honourable Dr. B. R. Ambedkar : We have already dealt with that amendment, and a similar amendment was moved by my Honourable Friend to article 73.

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ARTICLE 77

†The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by my honourable friend, Mr. Kamath. The existing article is based upon a very simple principle and it is this, that a person normally tenders his resignation to another person who has appointed him. Now the Speaker and the Deputy Speaker are persons who are appointed or chosen or elected by the House. Consequently these two people, if they want to resign, must tender their resignations to the House which is the appointing authority. Of course, the House being a collective body of people a resignation could not be addressed to each member of the House separately. Consequently, the provision is made that the resignation should be addressed either to the Speaker or to the Deputy Speaker, because it is they who represent the House. Really speaking, in theory, the resignation is to the House because it is the House which has appointed them. The President is not the person who has appointed them. Consequently, it would be very incongruous to require the Deputy Speaker or the speaker to tender their resignations to the President, who has nothing to do with House and who should have nothing to do with the House in order that the house may be independent of the executive authority exercised either through the President or through the Government of the day.

Shri H. V. Kamath : On a point of information, may I know from Dr. Ambedkar what is the procedure prevailing in the case of the Speaker of the Central Legislative Assembly today ?

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* CAD. Vol. VIII, 19th May 1949, p. 121

† *Ibid,* p. 123

The Honourable Dr. B. R. Ambedkar : The position today is so different. Does he ask about the present position or the position that he wants to create ? Under the Government of India Act the Assembly and the Speaker are the creatures of the Governor-General. Consequently, the Speaker is required to address his resignation to the Governor-General. We do not want that situation to be perpetuated. We want to give the President as complete and as independent position of the executive as we possibly can.

Shri H. V. Kamath : Even under the Government of India Act, is not the Speaker elected by the Assembly ?

The Honourable Dr. B. R. Ambedkar : That is wrong. He is no doubt elected; but his election is required to be approved by the Governor General.

Shri H. V. Kamath : I beg leave to withdraw the amendment, Sir.

The amendment was, by the leave of the Assembly, withdrawn.

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NEW ARTICLE 79-A

***Mr. President :** There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshayam Singh Gupta.

The Honourable Dr. B. R. Ambedkar : I would like this to stand over.

Mr. President : Article 79-A stands over.

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ARTICLE 80

†Mr. President : I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go to article 80. The motion is :

"The article 80 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That in clause (1) of article 80, for the words 'Save as provided in this Constitution' the words 'Save as otherwise provided in this Constitution' he substituted. "

Sir, this is just a slip and it has to be corrected.

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Shri T. T. Krishnamachari : May I point out that the House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath ?

The Honourable Dr. B. R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

* CAD, Vol. VIII, 19th May 1949, p. 126.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T. T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H. V. Kamath : 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus—

> " Save as otherwise provided in this constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting :
>
> Provided that the Chairman or Speaker, etc."

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***The Honourable Dr. B. R. Ambedkar :** Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H. V. Kamath : Which of my amendments ? I moved three amendments, separately.

The Honourable Dr. B. R. Ambedkar : The one which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendment as it stands is a single one.

Shri H. V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave, Sir, I may point them out firstly, adding " of either House " after the words " at any silting " Secondly deletion of the words " other than the Chairman or Speaker or person acting as such ". Thirdly inserting the words " provided that " at the commencement of the second para. I would like to know which of these three the Honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourble Dr. B. R. Ambedkar : I am referring to the Honourable Member's amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H. V. Kamath : Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be separately taken also. As amended, the article would read like this :

> "Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be ....."

* CAD Vol. VIII 19th May 1949, pp. 128-29.

The Honourable Dr. B. R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

[Article 80 as amended was added to the Constitution.]

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ARTICLE 81

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That in article 81 for the words 'a declaration' , the words 'an affirmation or oath' be substituted."

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Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words " a declaration ", the words " an affirmation or oath ". May I, Sir, invite your attention to the fact that the House has already adopted article 49 which provides for an affirmation or oath by the President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should, before he enters upon his office take the oath or affirmation in the following form :—

" I, A, B, in the name of God, do swear ", or " I, A, B, do solemnly affirm"……..

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution ?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause....

The Hononurable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading "Disqualifications of

* CAD, Vol. VIII, 19th May 1949, pp. 130-32.

Members" the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,— election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is, in whom this power to administer the oath shall be vested. Obviously, it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath ? Has he to go to the President or can he take the oath before the Speaker ? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administerd to him by the Speaker as the person authorised by the President. Consequently, in the case of a newly elected person, it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then takes the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision which is usually made for the President to confer his authority on the Speaker will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the speaker to derive his authority to administer the oath from the President ?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally, it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority…….

Mr. President: I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that auhtority does not belong to the Speaker and need not belong to the Speaker.

Mr. President: Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President: The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

[Amendment of Dr. Ambedkar as shown above was adopted. Article 81 was added to the Constitution]

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ARTICLE 82

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I beg to move :

"That after clause (1) of article 82, the following new clause be inserted :—

' 1. (a) No person shall he a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State .'

Sir, it requires no comment. It is the ordinary rule.

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†The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments of Mr. Naziruddin Ahmad or of Mr. Kamath either.

Mr. President : I shall now put the amendments to vote one after another.

[Amendment of Dr. Ambedkar alone as given above was accepted. Article 82, as amended, was added to the Constitution.]

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ARTICLE 83

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‡The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

" That for sub-clause (d) of clause (1) of article 83, the following be substituted :

'(d) If he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State and.' "

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#Mr. President : There is one point which I would like the Drafting Committee to consider in this case. If we refer to clause (2) of this article, there is no mention of Chairman or Vice-Chairman, Speaker or Deputy Speaker of the House of People. They also hold positions of profit. They are also paid officers.

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* CAD, Vol. VIII, 19th May 1949, p. 133

† *Ibid, p.* 136.

‡ *Ibid.,* p. 138.

Ibid., p. 141.

The Honourable Dr. B. R. Ambedkar : Not under the Government. So they do not come under this.

Mr. President : That is all right.

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***Mr. President :** Does anyone else want to speak ? Has Dr. Ambedkar to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments, except amendment No. 1587, standing in the name of the Honourable Shri G. S. Gupta.

(Amendment of Dr. Ambedkar was adopted)

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†Mr. President : Then there is the amendment of Mr. Kamath, No. 1585. But that does not arise now after accepting Dr. Ambedkar's amendment.

There is then Mr. Gupta's amendment No. 1587, that the word "and" should be deleted. Or has it to be substituted by " or " ?

The Honourable Dr. B. R. Ambedkar : It is the same thing; either deleted "and" or substitute ' or ' for ' and '

Mr. President : The question is :

" That the word ' and ' occurring at the end of sub-clause (d) of clause (1) of article 83 he deleted."

The amendment was adopted.

Article 83, as amended, was added to the Constitution.

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ARTICLE 85

‡Mr. President : We have had a very interesting discussion on something which is not the subject-matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all.

Now, I will take votes. Does Dr. Ambedkar wish to say anything ?

The Honourble Dr. B. R. Ambdkar : No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President : Then No. 1627, Shri Jaspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is :

" That in clause (4) of article 85, after the words ' a House of Parliament' the words ' or any committee thereof ' be inserted."

The amendment was adopted.

[Article 85 was added to the constitution.]

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* CAD, Vol. VIII, 19th May 1949, P. 142.

† *Ibid,* p. 143.

‡ *Ibid,* pp. 155-56.

ARTICLE 86

***The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Sir, I am sorry I cannot accept the amendment of my Friend Mr. Lari. I think it unnecessary to give an elaborate reply to the arguments advanced by the mover, in view of my complete agreement with what has been said on the other side by Mr. Ananthasayanam Ayyangar and Mr. T. T. Krishnamachari. I do not think it would be desirable to waste the time of the House in adding anything to what they have said.' Their reply I find is quite complete.

I, however, accept the amendment of Mr. Santhanam for the substitution of the words ' Constitutent Assembly ' for the words ' Legislature of the Dominion of India '.

[Except the amendment of Mr. Santhanam, other amendments were rejected. Article 86, as amended was added to the Constitution]

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ARTICLE 88

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

" That in clause (2) of article 88, for the words ' both Houses are ' the words ' the House referred to in sub-clause (c) of that clause is ' be substituted."

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President : Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That in clause (2) of article 88, before the last word ' days ' the word 'consecutive' be inserted."

(Amendment No. 1654 was not moved.)

The Honourable Shri K. Santhanam : Sir, I move :

" That in clause (4) of article. 88, the words ' total number of ' be deleted."

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent....

The Honourable Dr. B. R. Ambedkar : I shall be grateful if my Honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards ?

The Honourable Shri K. Santhanam : I agree, Sir.

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ARTICLE 88

‡The Honourable Dr. B. R. Ambedkar : Sir, there is only one amendment moved by my Friend Mr. Kamath which calls for some

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* CAD, Vol. VIII, 20th May 1949 p. 172.

† *Ibid,* p. 178.

‡ *Ibid.,* p. 183.

reply. His amendment is No. 1656 by which he seeks the omission of the wards " for the purposes of this Constitution ". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the Constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words " for the purposes of this Constitution" are in my judgment necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification for the fear they have expressed, but as other Members have pointed out, this is not in any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it is and see what happens in course of time. If their tears come true I have no doubt that some Honourable Member will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

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***The Honourable Dr. B. R. Ambedkar :** Sir, while going over this article, I find that it requires further to be considered. I would therefore request you not to put this article to vote today.

Mr. President : There are four amendments moved to this article, and the first amendment is No. 1669 that in clause (1) of article 90, the word 'only' be deleted. Mr. Naziruddin Ahmad wishes to emphasise the importance of that amendment. That may be taken into consideration by the Drafting Committee. The whole article is going to be reconsidered.

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* CAD, Vol. VIII, 20th May 1949 p. 191.

ARTICLE 91

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***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in the proviso to article 91, for the words ' not later than six weeks ' the words ' as soon as possible ' he substituted."

Mr. Naziruddin Ahmad : I have an amendment to this amendment, No. 94.

Mr. President : I think that is of a drafting nature.

Mr. Naziruddin Ahmad : There would be a difference in actual practice.

Mr. President : So, you consider it to be substantial ?

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Shri T. T. Krishnamachari : There is slight difference in language. I think Dr. Ambedkar's proposal will be the better one.

Mr. President : I shall put this to the vote. It need not be moved.

Amendment No. 1689 : this is also the same as amendment No. 1688 of Dr, Ambedkar. We have taken it as having been moved. Is it necessary to move this ? You can move it if there is some slight difference.

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†Mr. President : I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : No. Sir, I do not think any reply is necessary.

Naziruddin Ahmad's amendment was negatived.

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Mr. President : I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar ?

[Dr. Ambedkar's amendments were accepted. Others were rejected. Article 91., as amended, was added to the Constitution.]

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ARTICLE 67-A

‡Mr. President : We will take up article 67-A which was taken up the other day and was postponed.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I move for permission of the House to withdraw this article.

Mr. President : I think he did not move it and so there is no question of withdrawing it.

Mr. B. Pocker Sahib : (Madras : Muslim) : No, it was taken up and the House is in possession of it. The Honourable Member should therefore give his reasons for withdrawing it.

* CAD, Vol. VIII, 20th May 1949, p. 192.

† *Ibid.,* p. 195.

‡ *Ibid.,* p. 197.

Mr. President : Yes, I am sorry I made a mistake. The Hnourable Dr. Ambedkar may give his reasons for withdrawing the article.

The Honourable Dr. B. R. Ambedkar : Sir, my reason is this. As I explained on the last occasion, we have made a provision for nominating certain persons to Parliament. The original proposal was to nominate fifteen persons; subsequently it was decided that these fifteen persons should be divided into two categories, viz., twelve representing literature, science, arts, social services, and so on; and a further provision should be made for the nomination of three persons to assist and advise the Houses of Parliament in connection with any particular Bill, I feel Sir, that the provision which is already contained in article 67 which permits the President to have twelve persons nominated to Parliament would serve the purpose which underlines this new article 67-A. The services that would be rendered by the persons nominated, if article 67-A were passed into law, would be also rendered by the persons who would be nominated under article 67; and therefore the nominations under article 67-A would be merely a duplication of the nominative system covered in article 67. Besides, it is fell that in an independent Parliament which is fully sovereign and representative of the people there should not be too much of an element of nomination. We have already twelve; there may be some nominations also regarding the Anglo-Indians and it is felt that to add to that nominated quantum would be derogatory to the popular and representatiave character of Parliament. That is why I wish to withdraw this article 67-A.

Article 67-A was, by leave of the Assembly withdrawn

STATEMENT *re:* ARTICLE 92 TO 99

***The Honourable Dr. B. R. Ambedkar :** Sir, I propose that we start now with article 100.

Mr. President : I take it that the discussion on articles 92 to 99 should be held over for the time being to enable the business relating to finance and finance bills to be considered further.

The Honourable Dr. B. R. Ambedkar : Yes. The position is this. When article 90 was under debate I suggested that the debate should not be concluded and that the article should not be put to the vote because I discovered, at the last moment, a flaw in the article, which I thought it was necessary to rectify. Now if that flaw is to be rectified, then articles 96 to 99 also require to be reconsidered in the light of that article. Article 91 we have passed. Articles 92 to 99 require further

* CAD, Vol. VIII, 23rd May 1949. pp. 197-98

consideration and therefore I want those articles to be held over for the lime being. But we can begin with article 100.

[Article 100 was adopted and added to the Constitution as suggested by Dr. Ambedkar.]

ARTICLE 101

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***The Honourable Dr. B. R. Ambedkar :** Sir, with regard to the amendment of Mr. Kamath, I do not think it is necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a court ? Therefore the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the court. Therefore it is unnecessary to mention the words which Mr. Kamath wants in his amendment.

For the reason I have explained, the only forum where the proceedings can be questioned in a legal manner and legal relief obtained either against the President or the Speaker or any officer or Member, being the Court, it is unnecessary to specify the forum. Mr. Kamath will see that the marginal note makes it clear.

With regard to the amendment moved by my Friend Mr. Naziruddin Ahmad, he has not understood that the important words in sub-clause (2) are ' in whom powers are vested '.

Mr. Naziruddin Ahmad : For maintaining order.

The Honourable Dr. B. R. Ambedkar : 'No officer or other Member of Paliament in whom powers are vested ' are the persons who are protected by sub-clause (2). The Speaker is already an officer and also a Member. No powers has to be conferred upon him. The Constitution confers the power on him. Therefore, having regard to the fact that it is only ' other Member that is to say, Member besides the Speaker or the Deputy Speaker as the case may be, who requires to be protected. Therefore the word 'other' is important.

Mr. President : What is the effect of the words ' or for maintaining order' ?

The Honourable Dr. B. R. Ambedkar : Supposing there is a brawl in the House I do not like to put it that way. But, supposing there is a brawl in the House, and the Speaker, not finding any officer at hand to remove a certain Member, asks certain other Member who is present to remove the Member who is causing the brawl. Then that particular Member is the Member who is invested with this authority by the Speaker and he would come under "other Member ".

* CAD. Vol. VIII, 23rd May 1949, pp. 200-01

Mr. President : 'Or any other officer who is not a Member of the House' does he come under that ?

The Honourable Dr. B. R. Ambedkar : 'Officer' would he there.

Shri H. V. Kamath : May I ask for some clarification ? Mr. Santhanam, referring to my amendment said that the validity of any amendment can he called in question not merely in a court of law, but also in a legislature. Does Dr. Ambedkar agree with him ?

The Honourable Dr. B. R. Ambedkar : I am responsible for the explanation I have given.

Shri H. V. Kamath : As regards the other point mentioned by Dr. Ambedkar that the marginal sub-head is clear, may I point out that in the other forum, viz., the Legislative Assembly, I was told that the marginal headings have nothing to do with legislation as such and that articles or sections are taken without reference to the marginal headings. If this so, if you do not read the marginal heading and the article together, the meaning to my mind is not clear.

The Honourable Dr. B. R. Ambedkar : On that point there are two views. One is that the marginal note is not part of the section and the other view is that the marginal note is : for instance, Mr. Mavalankar, when he was in Bombay, held the view that the marginal note was not part of the section, but the present Speaker of the Bombay Assembly recently said that the marginal note was very much part of the section as it gives the key to the meaning of the section.

[Two amendments were negatived. Article 101 was added to the Constitution.]

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ARTICLE 102

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, my friend, Pandit Kunzru, has raised some fundamental objections to the provisions contained in this article 102. He said in the course of his speech that we were really reproducing the provisions contained in the Government of India Act, 1935, which were condemned by all parties in this country. It seems to me that my friend. Pandit Kunzru, has not borne in mind that there are in the Government of India Act, 1935, two different provisions. One set of provisions is contained in section 42 of the Government of India Act and the other is contained in section

* CAD, Vol. VIII, 23rd May 1949, pp. 213-17.

43. The provisions contained in section 43 conferred upon the Governor-General the power to promulgate ordinances which he felt necessary to discharge the functions that were imposed upon him by the Constitution and which he was required to discharge in his discretion and individual judgment. In the ordinances which the Governor-General had the power to promulgate under section 43, the legislature was completely excluded. He could do anything—whatever he liked—which he thought was necessary for the discharge of his special functions. The other point is this; that the ordinances promulgated by the Governor-General under section 43 could be promulgated by him even when the legislature was in session. He was a parallel legislative authority under the provisions of section 43. It would be seen that the present article 102 does not contain any of the provisions which were contained in section 43 of the Government of India Act. The President, therefore, does not possess any independent power of legislation such as the powers possessed by the Governor-General under Section 43. He is not entitled under this article to promulgate ordinances when the legislature is in session. All that we are doing is to continue the powers given under Section 42 to the Governor-General to the President under the provisions of article 102. They relate to such period when the legislature is in recess, not in session. It is only then that the provisions contained in article 102 could be invoked. The provisions contained in article 102 do not confer upon him any power which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgment. Consequently, my submission is that the argument which was profounded by my friend, Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous—I am using very cautious language—to the provisions contained in the British Emergency Powers Act, 1920. Under that Act also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is

the executive to do ? The executive has got a new situation arisen, which it must deal with *Ex hypothesi* it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again *Ex hypothesi,* the legislature is not in session. Therefore, it seems to me that fundamentally there is no objection to the provisions contained in article 102.

The point was made by my friend, Mr. Pocker, in his amendment No. 1796, whereby he urged that such an ordinance should not deprive any citizen of his fundamental right of personal liberty except on conviction after trial by a competent court of law. Now, so far as his amendment is concerned,. I think he has not read clause (3) of article 102. Clause (3) of article 102 lays down that any law made by the President under the provisions of article 102 shall be subject to the same limitations as a law made by the legislature by the ordinary process. Now, any law made in the ordinary process by the legislature is made subject to the provisions contained in the Fundamental Rights articles of this Draft Constitution. That being so, any law made under the provisions of article 102 would also be automatically subject to the provisions relating to fundamental rights of citizens, and any such law therefore will not be able to over-ride those provisions and there is no need for any provision as was suggested by my friend, Mr. Pocker, in his amendment No. 1796.

The amendment suggested by my friend, Mr. Kamath, *i.e.,* 1793, seems to me rather purposeless. Suppose one House is in session and the other is not. If a situation as I have suggested arises, then the provisions of article 102 are necessary because according to this Constitution, no law can be passed by a single House. Both Houses must participate in the legislation. Therefore the presence of one House really does not satisfy the situation at all.

Shri H. V. Kamath : Does it mean that when one House only is in session, say, the House of the People, the President will still have this power ?

The Honourable Dr. B. R. Ambekdar : Yes, the power can be exercised because the framework for passing law in the ordinary process does not exist.

Shri H. V. Kamath : Shameful, I should say.

The Honourable Dr. B. R. Ambedkar : Now, I come to the other question raised by my friend, Mr. Kunzru, in his amendment No. 1802. His suggestion is that such legislation enacted by the President under article 102 should automatically come to an end at the end of thirty days from the promulgation of the ordinance. The provision contained in the draft article is that it shall continue for six weeks after the meeting of Parliament. Now, the reason why my friend. Pandit Kunzru, has brought in his amendment is this; he says that under the provisions contained in the draft article, a much longer period might elapse than six weeks, because he thinks that the executive may take, say, a month or two for summoning Parliament. If Parliament is summoned, say in four months, then the six weeks also might be there—that would be practicable—or it might be longer if the Executive delays the summoning of the Parliament. Well, I do not know what exactly may happen, but my point is this that the fear which my Honourable friend Pandit Kunzru has is really unfounded, because we have provided in another article 69, which says that six months shall not elapse between two sessions of the Parliament, and I believe, that owing to the exigencies of parliamentary business, there will be more frequent sessions of the Parliament than Honourable Members at present are inclined to believe. Therefore, I say, having regard to article 69, having regard to the exigencies of business, having regard to the necessity of the government of the day to maintain the confidence of Parliament, I do not think that any such dilatory process will be permitted by the Executive of the day as to permit an ordinance promulgated under article 102 remain in operation for a period unduly long, and I, therefore, think that the provisions as they exist in the draft article might be permitted to remain.

Shri H. V. Kamath : Mr. President, Sir, may I ask one last question ? Is it not repugnant to our ideas or conceptions of freedom and democracy, which are, I pressume. Dr. Ambedkar's also, not to lay down the maximum life of an ordinance in this article ?

The Honourable Dr. B. R. Ambedkar : My own feeling is this that a concrete reason for the sentiment of hostility which has been expressed by my honourable friend, Mr. Kamath as well as my honourable friend Mr. Kunzru, really arises by the unfortunate heading of chapter " Legislative powers of the President". It ought to be " Power to legislate when Parliament is not in session". I think if that sort of

innocuous heading was given to the chapter, much of the resentment to this provision will die down. Yes. The word 'Ordinance' is a bad word, but if Mr. Kamath with his fertile imagination can suggest a better word, I will be the first person to accept it. I do not like the word "ordinance", but I cannot find any other word to substitute it.

Mr. President : There is another amendment which has been moved by Sardar Hukam Singh in which he says that the President may promulgate ordinances after consultation with his Council of Ministers.

The Honourable Dr. B. R. Ambedkar : I am very grateful to you for reminding me about this. The point is that that amendment is unnecessary, because the President could not act, will not act except on the advice of the Ministers.

Mr. President : Where is the provision in the draft Constitution which binds the President to act in accordance with the advice of the Ministers ?

The Honourable Dr. H. R. Ambedkar : I am sure that there is a provision, and the provision is that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

Mr. President : Since we are having this written Constitution, we must have that clearly put somewhere.

The Honourable Dr. B. R. Ambedkar : Though I cannot point it out just now, I am sure there is a provision. I think there is provision that the President will be bound to accept the advice of the Ministers. In fact, he cannot act without the advice of his Ministers.

Some Honourable Members : Article 61 (1).

Mr. President : It only lays down the duly of the Ministers, but it does not lay down the duty of the President to act in accordance with the advice given by the Ministers. It does not lay down that the President is bound to accept the advice. Is there any other provision in the Constitution ? We would not be able even to impeach him, because he will not be acting in violation of the Constitution if there is no provision.

The Honourable Dr. B. R. Ambedkar : May I draw your attention to article 61, which deals with the exercise of the President's junctions. He can not exercise any of his functions, unless he has got the advice, ' in the exercise of his functions. It is not merely to ' aid and advise '. " In the exercise of his functions " those are the most important words.

Mr. President : I have my doubts if this word could bind the President. It only lays down that there shall be a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It does not say that the President will be bound to accept that advice.

The Honourable Dr. B. R. Ambedkar : If he does not accept the advice of the existing ministry, he shall have to find some other body of ministers to advise him. He will never be able to act independently of ministers.

Mr. President : Is there any real difficulty in providing somewhere that the President will be bound by the advice of the ministers.

The Honourable Dr. B. R. Ambedkar : We are doing that. If I may say so, there is a provision in the Instrument of Instructions.

Mr. President : I have considered that also.

The Honourable Dr. B. R. Ambedkar : Paragraph 3 reads : In all matters within the scope of the executive power of the Union, the President shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers. We propose to make some amendment to that.

Mr. President : You want to change that. As it is, it lays down that the President will be guided by the ministers in the exercise of executive powers of the Union and not in its legislative power.

The Honourable Dr. B. R. Ambedkar : Article 61 follows almost literally various other constitutions and the Presidents have always understood that that language means that they must accept the advice. If there is any difficulty, it will certainly be remedied by suitable amendment.

Shri H. V. Kamath : You will be leaving this article silent on the subject of the maximum life of an ordinance which can extend to seven and a half months. It is impossible.

Mr. President : is Mr. Kamath going to make a second speech on his amendment.

The Honourable Dr. B. R. Ambedkar : Our President is quite different from the President of the United Stales.

[All 6 amendments were rejected. Article 102 was added to the Constitution.]

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***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in the heading to Chapter IV of Part V, for the words ' federal Judicature ' the words ' Union Judiciary ' be substituted."

This is merely consequential to the earlier article where India has been described as a Union.

The amendment was adopted.

ARTICLE 102-A

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Mr. President : It is eight O'clock now. I think we had better close the discussion.

Shri Brajeshwar Prasad : (Bihar : General) : May I have one minute of the lime of the House to speak on this motion.

Mr. President : I think the House is not willing to hear further speaches now.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any reply is necessary. If I may say so. it was rather unfortunate that Professor Shah should have moved this amendment. This matter was discussed in great detail when we were discussing the directive principles of State Policy. I do not therefore see why this matter was raised again and why there was a debate. The matter had been partically concluded in article 39-A.

Mr. President : I will now put the amendment to vote.

[The amendment was negatived.]

ARTICLE 103

‡**The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Mr. President, Sir, I move:

"That in clause (1) of article 103, for the words ' and such number of other judges not being less than seven, as Parliament may by law prescribe ' the words ' and until Parliament by law prescribes a larger number, of seven other judges ' be substituted."

The object of this amendment is that the constitution of the Supreme Court should not be held over until Parliament by law prescribes the number of Judges. The amendment lays down that seven Judges will constitute the Supreme Court.

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#**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in Explanation II to clause (3) after the words ' judicial office ' the words ' not inferior to that of a district judge ' be inserted."

* CAD. Vol. VIII. 23rd May 1949. p.218.

† *Ibid,* p. 227.

‡ *Ibid* 24th May 1949. p. 230.

Ibid., pp. 242-43.

I also move :

" That in clause (4) of article 103. for the words ' supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament' the words ' by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted ".

Mr. President : There is an amendment to this amendment by Dr. Bakshi Tek Chand, of which he has given notice. It is No. 101 in the printed pamphlet containing the amendments to amendments.

The amendment was not moved.

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***Mr. President :** Amendment No. 1857 is a verbal amendment.

Amendment No. 1858 stands in the name of Professor K. T. Shah.

Is not that covered by the words ' incapacity and misbehaviour ' ?

Prof. K.T. Shah : I would accept it if you think that they are covered. I do not move it.

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Mr. President : ...Amendment No. 1862 stands in the name of Dr. B. R. Ambedkar. That is also a formal amendment to substitute for the words "a declaration" the words "an affirmation or oath". We have made similar changes whereever that expression occurs in other parts of the draft Constitution. I take it that it is moved.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move :

" That in clause (6) of article 103, for the words * a declaration ' the words ' an affirmation or oath ' be substituted.'"

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†Mr. President : ...Dr. Ambedkar, would you like to say anything about the amendments.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I am prepared to accept two amendments. One of them is No. 1829 moved by Mr. Santhanam, and the other is No. 1845, moved by Mr. Kamath, by which he proposes that even a jurist may be appointed as a Judge of the Supreme Court. But with regard to Mr. Kamath's amendment No. 1845, I should like to make one reservation, and it is this. I am not yet determined in my own mind whether the word " distinguished " is the proper word in the context. It has been suggested to me that the word " eminent " might be more suitable. But as I said, I am not in a position to make up my mind on this subject; and I would, therefore, like to make this reservation in favour of the Drafting Committee, that the Drafting Committee should be at liberty when it revises the Constitution, to say

* CAD. Vol. VIII 24th May 1949, p. 244.

† *Ibid* pp. 257-60.

whether it would accept the word "distinguished" or substitute "eminent" or some oilier suitable word.

Now, Sir. with regard to the numerous amendments that have been moved, to this article, there are really three issues that have been raised. The first is, how are the Judges of the Supreme court to be appointed ? Now, grouping the different amendments which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament and the third suggestion is that they should be appointed in consultation with the council of States.

With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. There are two different ways in which this matter is governed in other countries. In Grexat Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in the United States where, for instance, offices of the Supreme Court as well as other offices of the Slate shall be made only with the concurrence of the Senate in the United States. It seems to me, in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United States, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex hypothesi,* well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment.

With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of Ms judgment. I personally feel no doubt that the Chief Justice is a very eminent person. But after all, the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I therefore, think that that is also a dangerous proposition.

The second issue that has been raised by the different amendments moved to this article relates to the question of age. Various views have been expressed as to the age. There are some who think that the judges ought to retire at the age of sixty. Well, so far as High Courts are concerned, that is the present position. There are some who say that the constitution should not fix any age-limit whatsoever, but that the age-limit should be left to be fixed by Parliament by law. It seems lo me that that is not a proposition which can be accepted, because if the matter of age was left to Parliament to determine from time to time, no person could be found to accept a place on the Bench, because an incumbent before he accepts a place on the bench would like to know for how many years in the natural course of things, he could hold that office; and therefore, a provision with regard to age, I am quite satisfied, cannot be determined by Parliament from time to time, but must be fixed in the Constitution itself. The other view is that if you fix any age-limit what you are practicality doing is to drive away a man who notwithstanding the age that we have prescribed, *viz.,* sixty-five, is hale and hearty, sound in mind and sound in body and capable for a certain number of years of rendering perfectly good service to the Slate. I entirely agree that sixty-five cannot always be regarded as the zero hour in a man's intellectual ability. At the same time, I think Honourable Members who have moved amendments to this effect have forgotten the provision we have made in article 107, where we have provided that it should be open to the Chief Justice to call a retired Judge to sit and decide a particular case or cases. Consequently by the operation of article 107 there is less possibility, if I may put it, of our losing the talent of individual people who have already served on the Supreme Court. I therefore submit that the arguments or the fears that were expressed

in the course of the debate with regard to the question of age have no foundation.

Now, I come to the third point raised in the course of the debate on this amendment and that is the question of the acceptance of office by members of the judiciary after retirement. There are two amendments on the point,—one of Prof. Shah and the other by shri Jaspat Roy Kapoor. I personally think that none of these amendments could be accepted. These amendments have been moved more or less on the basis of the provisions that have been made in the Draft Constitution relating to the Public Service Commission. It is quite true that the provision has been made that no member of the Public Services Commission shall be entitled to hold an office under the crown for a certain period after he has retired from the Public Services Commission. But it seems to me that there is a fundamental difference between the members of the judiciary and the members of the Federal Public Services Commission. The difference is this. The Public Services Commission is serving the Government and deciding matters in which Government is directly interested, *viz..,* the recruitment of persons to the civil service. It is quite possible that the minister in charge of a certain portfolio may influence a member of the Public Services Commission by promising something else after retirement if he were to recommend a certain candidate in whom the Minister was interested. Between the Federal Public Services Commission and the Executive the relation is a very close and integral one. In other words, if I may say so, the Public Services Commission is at all times engaged in deciding upon matters in which the Executive is vitally interested. The judiciary decides eases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote, and my personal view, therefore, is that the provisions which are applied to the Federal Public Services Commission have no place so far as the judiciary is concerned. Besides, there are very many cases where the employment of judicial talent in a specialised form is very necessary for certain purposes. Take the case of our Friend Shri Varadachariar. He has now been appointed member of a Commission investigating income-tax questions.

Shri Jaspat Roy Kapoor : Let it be in an honorary capacity.

The Honourable Dr. B. R. Ambedkar : No, he is paid. It is an office of profit under the crown.

Therefore, who else can be appointed to positions like this, except persons who had judicial talent ? It would be a very great handicap if these very persons who possess talent for doing work of this sort were deprived by provisions such as Shri Jaspat Roy Kapoor suggests. And I have said that the relation between the executive and judiciary are so separate and distinct that the executive has hardly any chance of influencing the judgment of the judiciary. I therefore suggest that the provision suggested is not necessary and I oppose all the amendments.

Following two amendments were accepted.

(1) Amendment by Mr. Santhanam :—

"That in clause (2) of article 103. for the words 'may be' the words 'the President may deem' he substituted.

(2) Amendment by Mr. kamath :—

"That in clause (3) of article 103, the following new sub-clause be added :—

(c) or is an eminent jurist' ".

All four amendments of Dr. Ambedkar as shown before were adopted. In all 18 amendments moved by other members were rejected.

[Article 103, as amended, was added to the Constitution]

ARTICLE 103-A.

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***The Honourable Dr. B. R. Ambedkar :** I should like to dispose of this mailer in as few words as possible. Before I do so, I should like to state what I understand to be the idea underlying this particular amendment. For the purpose of understanding the main idea underlying this amendment, I think we have to take up three different cases. One case is the case of a Judge of the Supreme Court who has been appointed to an executive office with no right of reversion to the Supreme Court. Thai is one case. The second case is the appointment of a Supreme Court Judge after he has held that post to an executive office of a non-judicial character. The third ease is the case of a Supreme Court Judge being given or assigned duties of a non-judicial character with the right to revert to the Supreme Court. I understand that—my friend Dr. Sen may correct me if I am wrong—this amendment refers to the third proposition, *viz.,* the assignment of a Supreme Court Judge to non-judicial duties for a short period with the right for him to revert to the Supreme Court.

With regard to the first case that I mentioned, *viz.,* the appointment of a Supreme Court Judge to an executive office provided the Supreme

* CADVol. VIII. 24th May 1949, pp.266-67

Court Judge resigns his post as a Judge of the Supreme Court, I do not see any objection at all, because he goes out of the Supreme Court altogether.

With regard to the second case, viz., the assignment of duties to a Supreme Court Judge who has retired, we have just now disposed of it. There ought to be no limitation at all.

With regard to the third case, I think it is a point which requires consideration. We have had two cases in this country. One was the case which occured during the war when a Judge of the Federal Court was sent round by the then Government of India on diplomatic missions. We have also had during the regime of this Government the case where the Chief Justice or a Judge—I forget now—on one of the High Courts, was sent out on a diplomatic mission. On both occasions there was some very strong criticism of such action. My Friend, Mr. Chimanlal Setalvad, came out with an article in the *Times of India,* criticising the action of the Government. Personally I share those sentiments. I am, however, at present not in a position to accept the amendment as worded by Dr. P. K. Sen because the wording either goes too wide or in some cases too narrow. I am prepared to recommend to the Drafting Committee that this point should be taken into consideration. On that assurance, I would request him to withdraw his amendment.

Shri Jaspat Roy Kapoor : May I request that a decision on this clause may be held over till tomorrow because many of us would like to study it carefully.

Mr. President: Dr. Ambedkar has told us that he is willing to refer it to the drafting Committee for its consideration.

Shri Jaspat Roy Kapoor : It might stand over

Mr. President: When it is referred to the Drafting Committee, it means that it stands over, because when it comes back again, it will come back in the form in which it is approved by the Drafting Committee.

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ARTICLE 104

***The Honourable Dr. B. R. Ambedkar** (Bombay : General): Sir, I would request that article 104 be postponed.

ARTICLE 106

†The Honourable Dr. B. R. Ambedkar : I accept the two amendments—No. 124 of List No. VI and amendment No. 1883.

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* CADVol. VIII, 27th May 1949. p. 375.

†*Ibid.* p. 377.

Mr. President: There have been two amendments moved. Both have been accepted by Dr.Ambedkar. I will now put them to the vote.

"That with reference to amendment No. 1883 of the List of amendments, in clause (1) of article 106, after the words ' Chief Justice may ' the words ' with the previous consent of the President and ' be inserted."

" That in clause (1) of article 106, after the words ' High Court' where they occur for the second time, the words 'duly qualified for appointment as a judge of the Supreme Court' be inserted."

Folling amendments were adopted.

[Both the above amendments were accepted. Article 106, as amended, was added to the constitution]

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ARTICLE 107

Mr. President: Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

Shri Jaspat Roy Kapoor : I am not moving amendment No. 1886 as there is another amendment on the same lines.

Mr. President: Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

***The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move:

"That in article 107 the words ' subject to the provisions of this article ' be deleted."

Those words are quite unnecessary.

Shri T. T. Krishnamachari : I move :

" That in article 107, in line 3, after the words ' at any time ', the words ' with the previous consent of the President' be inserted."

(Amendment Nos. 1889 and 1890 were not moved.)

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†Mr. President: We have now the amendments and the article for discussion.

The Honourable Dr. B. R. Ambedkar : I accept amendment 125 moved by Shri T. T. Krishnamachari.

The amendment was adopted.

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ARTICLE 108

‡The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for amendment No. 1891 of the List of Amendments, the following be substituted :—

"That for article 108, the following articles be substituted :

108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

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* CAD, Vol. VIII, 27th May 1949, p.377.

† *Ibid* p. 377.

‡ *Ibid,* p. 379.

108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the High Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words ' a court of record ' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England tills power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where the court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, " or at such other place or places, as the Chief Justice of India may, with the approval of the President,

* CAD, Vol. VIII, 27th May 1949, p. 382.

from time to time, appoint "then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place which Parliament may decide as the capital. Therefore, I think the subsequent ward are necessary. With regard to the point raised by my honourable Friend Mr. Kapoor. I think the answer given by my friend Mr. Krishnamachari is adequate and I do not propose to say any more.

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***Shri Jaspat Roy Kapoor :** May I seek a small clarification from Dr. Ambedkar ? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously ?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. A circuit court is only a Bench.

[Amendments of Dr. Ambedkar were accepted. Rest rejected. Article 108 and 108-A as amended, were added to the Constitution.]

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†The Honourable Dr. B. R. Ambedkar : Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because these articles while they state general rules, also make certain reservations with regard to the States in Part III of Schedule I. It is understood that the matter as to the position of the States in Part III is being reconsidered, so that the States in Part III will be brought on the same level and footing as the States in Part I. If that happens, then, there will be no necessity to introduce these reservations in these articles 109—114. I suggest these may be held over.

Mr. President: We will pass them over for the present.

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‡Mr. President: Amendment No. 1939, in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

> "'That in article 115. the words and brackets ' (which relates to the enforcement of fundamental rights)' he deleted."

The words are superflous.

Mr. President : No. 1940 is the same as the one just now moved and so need not be moved. No. 1941 standing in the name of Mr.

* CAD, Vol. VIII, 27th May 1949, p. 383.

† *Ibid,* pp. 383-84.

‡ *Ibid.,* p. 385.

Naziruddin Ahmad is also of a drafting nature and need not be moved No. 1942 is not moved.

I think these are the amendments that we have now.

Does any Member wish to say anything ?

We shall now put the amendments.

I will first take Dr. Ambedkar's amendment No. 1939 (mentioned above).

The amendment was adopted.

[Dr. Bakshi Tek Chand's amendment to amendment No. 1938, as given below was also adopted.]

"That in article 115, for the words ' or orders in the nautre of the writs ' the words ' orders or writs, including writs in the nature ' be substituted. "

[Article 115, as amended, was added to the Constitution.]

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ARTICLE 117

***The Honourable Dr. B. R. Ambedkar :** Sir, there is one point which I should like to mention. It is not certainly the intention of the proposed article that the Supreme Court should be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one which it had taken before. So far as the language is concerned I am quite satisfied that the intention is carried out.

Shri H. V. Kamath : Then why not say " all other courts " ?

The Honourable Dr. B. R. Ambedkar : " All courts " means " all other courts."

[Article 117 was adopted without amendment and added to the Constitution.]

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ARTICLE 119

†**Mr. President:** Amendment No. 1951 is ruled out.

Shri H. V. Kamath : Sir, the point which I wish to raise in my amendment No. 1952 is a simple one. The article contemplates that the Supreme Court should report to the President its opinion or in its discretion it may with held its opinion. I believe what is meant is that when once the President refers the matter to the Supreme Court for its opinion there is no option for the Supreme Court. If that is not meant then the language is right. But if it is meant that once the President refers the matter to the Supreme Court it must report its opinion thereon to the President, then the word "shall" must come in. I wanted a clarification on that point.

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* CAD, Vol. VIII, 27th May 1949, p. 386.

† *Ibid* p. 387.

The Honourable Dr. B. R. Ambedkar : The Supreme court is not bound.

Shri H. V. Kamath : Then I do not move my amendment.

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***The Honourable Dr. B. R. Ambedkar :** May I request you, Sir, to hold over this article 119, because it has also reference to article 109 to 114 which we have decided to hold over.

Shri H. V. Kamath : Then, Sir, I shall reserve my right to move the amendment later on.

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ARTICLE 121

†The Honourable Dr. B. R. Ambedkar : I would request Sir, that this article be allowed to stand over.

ARTICLE 122

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That for the existing article 122, the following be substituted :—

' 122. *Officers and servants and the expenses of the Supreme Court.*—(1) Appointments of officers and servants of the Supreme Court shall be made by the chief Justice of India or such other judge or officer of court as he may direct:

Provided that the President may by rule require that in such cases may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.' "

The object of this redraft is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the revenues of India.

Sir, there is an amendment to this amendment, which I should like to move at this stage :

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted :—

' Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President' "

* CAD, Vol. VIII, 27th May 1949, p.387

† *Ibid* p.388.

Mr. President: There is an amendment of Mr. Kapoor to this amendment.

Shri Jaspat Roy Kapoor : It is now covered by the new amendment moved by Dr. Ambedkar. So I consider it unnecessary to move it.

(Amendment Nos. 1968 and 1969 were not moved.)

Mr. President: So there is only the amendment of Dr. Ambedkar. I shall first take the amendment he has moved to his own amendment.

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T.T. Krishnamachari very aptly called an "*Imperium in Imperio*". We do not want to create an *Imperium in Imperio* and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, it they will carefully examine the provisions of the new amendment which I have proposed in place of the original article 122, will find that the new article proposes to steer a middle course. It refuses to create an *Imperium in Imperio,* and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour. I need not therefore, dilate on all the provisions contained in this new article 122, because I find that even among the speakers who have taken part in the debate on this article, there is general agreement that certain clauses of the new article 122 are unexceptionable, that is to say, clause (1), clause (3) and even clause (2). The only point of difference seems to be on proviso to clause (2). In the original proviso, the provision was that with regard to salaries, allowances and so on and so on, the Chief Justice shall fix the same, in consultation with the President. The amended proviso provides that the Chief Justice shall do it with the approval of the President, and the question really is whether the original provision that this should be done in consultation with the President or whether it might be done with the approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, "Consultation with the President,"

* CAD, Vol. VIII. 27th May 1949, pp.397-99

left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words "approval of the President" seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court ? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval—I am sorry it is section 242 sub-clause (4)—leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable—I do not say that it will happen—but it is quite conceivable that the chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other departments, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, speaking for myself, I do not think that this clause by itself would

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be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State ? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government of India Act, 1935, which says that the Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal legislature. So that if the executive differed from the chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the Constitution we are adopting and we must therefore, in my judgment, find some other method of securing for the chief Justice and adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

[Dr. Amhedkar's both the amendments were accepted Article. 122, as amended, was added to the Constitution.]

ARTICLE 124

***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles. Speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties—and his duties, I submit, are far more important than the duties even of the Judiciary—he should have been certainly as independent as the Judiciary. But, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not given him the same independence which we have given to the Judiciary, although I personally feel that he ought to have far greater independence than the Judiciary itself.

One difference, if I may point out, between the position which we have assigned to the Judiciary and which we propose to assign to the Auditor-General is this. It is only during the course of the last week that I moved an amendment to the original article 122 vesting in the Supreme Court the power of appointment of officers and servants of the Supreme court. I see both from the original draft as well as from the amendments that are moved that the Auditor-General is not to have any such power. The absence of such a power means that the staff of the Auditor-General shall be appointed by the Executive. Being appointed by the Executive, the Staff shall be subject to the Executive for disciplinary action. I have not the slightest doubt in my mind that if an officer does not posses the power of disciplinary control over his immediate subordinates, his administration is going to be thoroughly demoralised. From that point of view, I should have thought that it would have been proper in the interests of the people that such a power should have been given to the Auditor-General, But, sentiment seems to be opposed to investing the Auditor-General with such a power. For the moment, I feel that nothing more can be done than to remain content with the sentiment such as it is today. This is my general view.

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*CAD, Vol. VIII, 30th May 1949, pp. 407-08.

Coming to the amendments, I accept the amendments moved by Mr. T. T. Krishnamachari and one amendment moved by Mr. B. Das, No. 1975. These amendments, certainly to a large extent, improve the position of the Auditor-General which has been assigned to him in the draft Constitution or in the various amendments. But, I find that even with the article as amended by these amendments, Mr. Sidhva seems to have a complaint. If I understand him properly, his complaint was that the expenses of the Auditor-General should not be made a charge on the Consolidated Fund, but that they should be treated as ordinary supplies and services which should be voted upon by Parliament. His position was that there is no good reason why Parliament should be deprived of its right to discuss the charges and the administrative expenses of the Auditor-General. I think my honourable Friend Mr. Sidhva has completely misunderstood what is meant by charging certain expenses on the revenues of India. If my honourable friend Mr. Sidhva will turn to article 93, which deals with this matter, he will find that although certain expenses may be charged upon the revenues of India, the mere fact that that has been done, does not deprive Parliament of the right to discuss those charges. The right to discuss is there. The only thing is that the right to vote is not given. It is a non-votable item. The reason why it is made non-votable is a very good reason because just as we do not want the Executive to interfere too much in the necessities as determined by the Auditor-General with regard to his own requirements, we do not want a lot of legislators who might have been discontended for some reason or other or because they may have some kind of a fad for economy, to interfere with the good and efficient administration of the Auditor-General. That is why this provision has been made. My Friend Mr. Sidhva will also realise that this provision is not in any way extraordinary. It is really on a par with the provision we have made with regard to the Supreme Court. I therefore think that there is no good ground for accepting the criticism that has been made by Mr. Sidhva on this point.

Sir, I move that the article as amended be adopted. I accept the amendments Nos. 25 in List I, 1975 of Mr. B. Das, 130 of Mr. T. T. Krishnamachari, 131 of Mr; T. T. Krishnamachari and 25-C of List I also by Mr. Krishnamachari.

Mr. President: I will now put the amendments to vote.

[Following amendments were adopted.]

1 "That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, of Part V for the word 'Auditor-General' wherever it occurs, (including the heading) the words 'Comptroller and Auditor-General' be substituted."

2 "That in clause (1) of article 124 after the word 'President' the words 'by warrant under his hand and seal' be inserted."

3 "That with reference to amendment No. 1975 of the List of amendments, after clause (1) of article 124, the following new clause be inserted :—

'(1-a) Every person appointed to be the comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.'"

4 "That for amendment No. 25-A of List-I (Third Week) of amendments to Amendments, dated the 2Sth May 1949, the following be substituted :—

"that with reference to amendment No. 1980 of the List of amendments, for clause (4) of article 124, the following clause be substituted :—

'(4) Subject to the provisions of any law made by Parliament; the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.'"

5 "That with reference to amendment No. 1981 of the List of amendments, for clause (5) of article 124, the following clause be substituted :—

"(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.'"

Article 124, as amended was added to the constitution.

ARTICLE 125

***Mr. President:** Amendment No. 1986, by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for the Explanation to article 125, the following Explanation be' substituted :—

"*Explanation.*— In this article, the expression 'law made by Parliament' includes any law ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution and for the time being in force in the territory of India'."

The House probably will remember that the functions of the Auditor-General are regulated not by law made by Parliament, but by Ordinance, order, bye-law, rule or regulation, etc., made by the Governor-General, under the powers conferred upon him by the Government of India Act,

*CAD, Vol. VIII, 30th May 1949, p. 412.

1935. Consequently, in order to keep alive the ordinances, orders, bye-laws, rules and regulations made by the Governor-General, it is necessary to amplify the explanation so as to include these orders also.

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***The Honourable Dr. B. R. Ambedkar :** Sir, with regard to the amendment of my Friend Mr. Kunzru I am prepared to accept it provided he is prepared to drop the words "or any local".....†

Pandit Hirday Nath Kunzru : I have dropped them.

The Honourable Dr. B. R. Ambedkar: Because local audit is a matter which is within the control of the Provincial Governments. But the addition of the words "other authority" I think may be necessary or even useful. As he has himself said, the policy of the Government of India today is to create a great many corporations to manage undertakings which it is not possible to manage departmentally and consequently it is necessary that the Government of India should make some provision for the audit of these corporations. That being so I think it is desirable to vest the Central Government with power to allow the Auditor-General to audit even the accounts of all such authorities. Subject to the modification I have suggested, I am prepared to accept the amendment.

With regard to the point made by my Friend Mr. Sidhva that many of these rules with regard to the duties of the Auditor-General are made by the executive, and, therefore, since by the amendment which I have suggested we are continuing to give these powers the same operation which they had before, we are practically investing the Executive with the authority to prescribe the duties of the Auditor-General. Obviously, there is an incongruity in this position, in that an officer who is supposed to control the Executive Government with regard to the administration of the finance should have his duties prescribed by rules laid by the Executive. Now the only reply that I can give to my honourable Friend, Mr. Sidhva, is this that these provisions have been taken bodily to a large extent from the provisions contained in section 151 of the present Government of India Act, 1935, which deal with the custody of public money, and section 166 which deals with the rules made by the Governor-General with regard to the duties of the Auditor-General.

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*CAD, Vol. VIII, 30th May 1949, pp. 414-15.

†Dots indicate interruption.

Under the scheme of that Act the rules were required to be made by the Governor-General in the exercise of what is called his individual judgment, that is to say, he would not be required to take the advice of his Ministry in making these rules. To that extent the rules made by the Governor-General prescribing the duties of the Auditor-General would undoubtedly be independent of the Executive. Today we are not vesting the President with any such power of independent judgment so that if any modification in these rules were to be made by the President he would undoubtedly be acting on the advice of the Ministry of the day, that is to say, the Executive. I admit that to that extent there is a certain amount of anomaly, but I do hope that my honourable friend, Mr. Sidhva, who, I hope, will continue to function as a Member when the new Parliament is constituted, will take on himself the earliest opportunity of urging Parliament to change the position and to convert the rules into laws made by Parliament.

[Following amendment of Pandit Kunzru in addition to that of Dr. Ambedkar mentioned before was accepted.]

"That in clause (1) of article 130, after the word 'may' the words 'on behalf of the people of the State' be inserted."

(Article 125, as amended, was added to the Constitution.)

ARTICLE 127

***The Honourable Dr. B. R. Ambedkar :** Sir I move :

"That in article 127, for the word 'Parliament' the words 'each House of Parliament' be substituted."

It is only a formal amendment.

The amendment was adopted.

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ARTICLE 130

†**The Honourable Dr. B. R. Ambedkar** : Sir, this article is an exact reproduction of article 42 which deals with the executive power of the Union. There is no change made at all. Word for word this article is a reproduction of article 42. I find from the book of amendments that exactly similar amendments were tabled to article 42 and they were debated at great length. I do not think I can usefully add anything to what I said in the course of the debate on article 42 and the amendments

* CAD, Vol. VIII, 30th May 1949, p. 415.

† *Ibid.,* p. 423.

thereon. Therefore, I submit that I am not prepared to accept any of the amendments that have been moved here.

[All the three amendments moved by Prof. K. T. Shah, Mr. Mod. Tahi and Mr. Naziruddin Ahmad were rejected by the House.]

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ARTICLE 131

***Mr. President:** It is only a question of the order in which the amendments are taken. I want to dispose of the question of election first.

Shri T. T. Krishnamachari: The choice of the alternative may be left to the mover. Dr. Ambedkar may say which he proposes to move. Normally the procedure will be to move a particular article. The Chairman of the Drafting Committee will be the person to make the choice, if you allow it to him, that will solve the problem. He might move one of the alternatives. This procedure is going to come in the way of normal procedure later on. So, I think the best thing is to leave the discretion to the mover. If you recognise Dr. Ambedkar as mover, then he may be asked to move one or other of the alternatives.

Mr. President: Is Dr. Ambedkar prepared to accept one of the other alternatives ?

The Honourable Dr. B. R. Ambedkar: Sir, I want to say a word regarding procedure to be followed. Taking the article 131, as it is, no doubt it is put in an alternative form. The two alternatives have one tiling in common *viz.,* that they propose the Governor to be elected. The form of election is for the moment a subsidiary question. As against that, there are three or four amendments here which set out a principle which is completely opposed to the two alternative drafts of 131 and they suggest that the Governor should be nominated. If the amendment which proposes that the Governor should be nominated were to be accepted by the House, then both the alternatives would drop out and it will be unnecessary for the House to consider them. Therefore my suggestion would be that it would be desirable to take up No. 2010 of Mr. Gupte, and then Mr. Kamath and then No. 2015. If this matter was taken up first and the House came to the conclusion on whether the principle of appointment by the President should be accepted, then obviously there

* CAD, Vol. VIII, 30th May 1949, p. 425.

would be no purpose served in discussing article 131 in either of its alternative forms. That would be my suggestion subject to your ruling in the matter.

Mr. President: There are several amendments which support the idea of election or appointment by President. The other amendments are regarding the method of election. First I want to get rid of the question of election so that all amendments relating to method of election will go. Then we can take up the question of appointment and the appointment in that case will be by the President.

Shri Alladi Krishnaswami Ayyar (Madras : General): If the question of appointment or not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's views in the matter.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** Mr. President, Sir after such a prolonged debate on the amendment I think it is quite unnecessary for me to take the time of the House in making any prolonged speech. I have risen only to make two things clear; one is to state to the House the exact co-relation between the two alternatives that have been placed by the Drafting Committee before the House and amendment No. 2015 which has been debated since yesterday. My second purpose is to state the exact issue before the House, so that the House may be able to know what it is that it is called upon to bear in mind in deciding between the alternatives presented by the Drafting Committee and the new amendment.

Sir, the first alternative that has been put by the Drafting Committee is an alternative which is exactly in terms of the decision made by this House some time ago in accordance with the recommendations of a Committee appointed to decide upon the principles governing the Provincial Constitution. The Drafting Committee had no choice in the matter at all, because according to the directions given to the Drafting Committee it was bound to accept the principle which had been sanctioned by the House itself. The question, therefore, arises : why is it that the Drafting Committee thought it tit to present an alternative ? Now, the reason why the Drafting Committee presented an alternative

* CAD, Vol. VIII, 31st May 1949, pp. 467-69

is this. The Drafting Committee felt, as everybody in this House knows, that the Governor is not to have any kind of functions—to use a familiar phraseology, "no functions which he is required to discharge either in his discretion or in his individual judgment." According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters. Having regard to this fact it was felt whether it was desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well. It was also felt, nobody, knowing full well what powers he is likely to have under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few would come forward to stand for election. That was the reason why the Drafting Committee thought that another alternative might be suggested.

It has been said in the course of the debate that the argument against election is that there would be a rivalry between the Prime Minister and the Governor, both deriving their mandate from the people at large. Speaking for myself, that was not the argument which influenced me because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minister would be elected on the basis of policy, while the Governor could not be elected on the basis of policy, because he could have no policy, not having any power. So far as I could visualise, the election of the Governor would be on the basis of personality : is he the right sort of person by his status, by his character, by his education, by his position in the public to fill in a post of Governor ? In the case of the Prime Minister the position would be; is his programme suitable, is his programme right ? There could not therefore be any conflict even if we adopt the principle of election.

The other argument is, if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble ? It was because of this feeling that the Drafting Committee felt that they should suggest a second alternative. Now, so far as the course of debate has gone on in this House, the impression has been created in my mind that most speakers feel that there is a very radical and fundamental difference between the

second alternative suggested by the Drafting Committee and this particular amendment. In my judgment there is no fundamental distinction between the second alternative and the amendment itself. The second alternative suggested by the Drafting Committee is also a proposal for nomination. The only thing is that there are certain qualifications, namely, that the President should nominate out of a panel elected by the provincial Legislature. But fundamentally it is a proposal for nomination. In that sense there is no vital and fundamental difference between the second alternative proposed by the Drafting Committee and the amendment which has been tabled by Mr. Brajeshwar Prasad. In other words, the choice before the House, if I may say so, is between the second alternative and the amendment. The amendment says that the nomination should be unqualified. The second alternative says that the nomination should be a qualified nomination subject to certain conditions. From a certain point of view I cannot help saying that the proposal of the Drafting Committee, namely that it should be a qualified nomination is a better thing than simple nomination. At the same time I want to warn the House that the real issue before the House is really not nomination or election—because as I said this functionary is going to be a purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery, is a purely psychological question—what would appeal most to the people—a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this : that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the Act, and has no power to interfere with the internal administration of a Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination. Therefore my submission is…….

Shri Rohini Kumar Chaudhari : Can he contemplate any situation, where a Governor—whether you call him a mere symbol or not—will not have the power to form the first Ministry ? Will he not be competent to call upon any one, whether he has a big majority or a substantial minority ? And that is a very big power of which he cannot be deprived under any circumstances.

The Honourable Dr. B. R. Ambedkar : Well that power an elected or a nominated Governor will have. If he happens to call the wrong person to form a Ministry, he will soon find to his cost that he has made a wrong choice. That is not a thing that could be avoided by having an elected Governor. Such a Governor may have a friend of his choice whom he can call in to form a Ministry and that issue can be settled by the House itself by a motion of no-confidence or confidence. But that is not the aspect of the question which is material. The aspect of the question which is material is. Is the Governor going to have any power of interference in the working of a Ministry winch is composed of a majority in the local Legislature ? If that Governor has no power of interference in the internal administration of a Ministry which has a majority, then it seems to me that the question whether he is nominated or elected is a wholly immaterial one. That is the way I look at it and I want to tell the House that in coming to their decision they should not bother with the more or less academic question—wether the Governor has to be nominated or to be elected—they should bear in mind this question : What are the powers with which the Governor is going to be endowed ? That matter, I submit, is not before us today. We shall take it up at a later stage when we come to the question of articles 175 and 188 and probably by "amendment or the addition of some other clause which would give him powers. The House should be careful and watchful of these new sections that will be placed before them at a later stage. But today it seems to me, if the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with no power of interference in the administration of the province, then it seems to me quite immaterial whether he is nominated or elected.

Shri L. Krishnaswami Bharathi : Is the honourable Member accepting the amendment ?

The Honourable Dr. B. R. Ambdekar : I am leaving it to the House.

Mr. President: I shall then put amendment 2015 moved by Shri Brajeshwar Prasad to the vote.

The question is :

"That for article 131. the following be substituted :—

'131. The Governor of a State shall be appointed by the President by warrant under his hand and seal.'"

The amendment was adopted.

Mr. President: I think after this all the other amendments to this article fall to the ground and therefore I shall put the article as amended to the vote.

Article 131, as amended, was added to the Constitution.

ARTICLE 132

***Mr. President:** There is an amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That with reference to amendments Nos. 2033 and 2041 of the List of Amendments for article 132, the following article be substituted :—

'*Term of office of Governor*.—132. (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may. by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a governor shall hold office for a term of five years from the date on which he enters upon his office :

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office'."

Now, Sir, this article.....†

Prof. Shibban Lal Saksena : On a point of order. Amendment No. 2033 has not been moved. There is another amendment 2041, to which this is an amendment. But even that has not been moved.

Mr. President: But that has not been moved.

Shri T. T. Krishnamachari : Amendment No. 2041, stands in the name of Dr. Ambedkar.

Mr. President: Well, he may formally move it.

The Honourable Dr. B. R. Ambedkar : I have said that I am moving this in place of that amendment.

Mr. President: Dr. Ambedkar is moving No. 2041.

* * * * *

‡The Honourable Dr. B. R. Ambedkar : Sir, the position is this : This power of removal is given to the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor.

* CAD, Vol. VIII, 31st May 1949, p. 470.

†Dots indicate interruption.

‡ *Ibid.,* p. 474.

It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under (he formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unneccessary to categories the conditions under which the President may undertake the removal of the Governor.

[Amendment of Dr. Ambedkar as given above, was accepted. Article 132, as amended was added to the Constitution.]

ARTICLE 134

***Mr. President:** We have dropped the first alternative, and we have to take the amendments only to the second alternative, and I think amendment No. 164 standing in the name of Dr. Ambedkar would cover.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 2061 of the List of Amendments, for article 134, the following be substituted :—

Qualifications for appointment as Governor. —'No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years'."

Sir, may I take it that the amendment is moved ?

Shri T. T. Krishnamachari : Mr. President, the Chair and the House can permit the substitution of an amendment.

Mr. President : You need not read the amendment in full.

The Honourable dr. B. R. Ambedkar : Sir, I move Amendment No. 2061,.Sir, I also move that for amendment No. 2061, the following be substituted :—

"*Qualifications for appointment as Governor.*—" No person shall be eligible for appointment as Governor unless he is a citizen of India has completed the age of thirty-five years.'"

[Motion was accepted. Article 134 was added to the Constitution.]

ARTICLE 135

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in clause (1) of article 135, for the words 'either of Parliament or,' the words 'of either House of Parliament or of a House' be substituted."

This is a formal amendment. Sir, I move :

"That in clause (1) of article 135—

(a) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted.

(b) for the words 'in Parliament or such legislature as the case may be' the words 'in that House' be substituted."

* CAD, Vol. VIII, 31st May 1949, p. 475.

† *Ibid.,* p. 476.

Sir, I move :

"That in clause (2) of article 135, for the words or position of emolument' the words 'of profit' be substituted."

Shri H. V. Kamath : (C. P. Berar: General): Mr. President, I move :

"That in clause (3) of article 135 the words "the Governor shall have an official residence, and" be deleted."

Mr. President : "There" also must be deleted.

Shri H. V. Kamath: "There" will remain…….I do not know which constitution has given inspiration to Dr. Ambedkar and his collegues of the Drafting Committee.

An Honourable Member : Irish constitution.

The Honourable Dr. B. R. Ambedkar : We have passed article 48 exactly in the same terms with reference to the President. Here, we are merely following article 48.

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(All amendments of Dr. Ambedkar were accepted. Other rejected.)

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[Article 135 as amended was adopted and added to the Constituted.]

***Mr. President:** There is notice of an amendment by Professor Shah suggesting the addition of a new article after article 135.

The Honourable Dr. B. R. Ambedkar : Before we go to the next amendment I would like to suggest that in article 135, the word "elected" be dropped.

Mr. President: That is understood.

ARTICLE 136

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 136 for the words 'in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice or, in his absence, any other judge of the High Court exercising jurisdiction in relation to the State' be substituted."

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Mr. President : As amendments Nos. 2107, 2108 and 2109 are not, I understand, being moved, does Dr. Ambedkar wish to make any reply to the amendments moved ?

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by Shri T. T. Krishnamachari and also the one moved by my friend Mr. Kamath.

*CAD, Vol. VIII, 31st May l948, p. 482.

† *Ibid p.* 484.

(The amendments which were accepted by Dr. Ambedkar were as under :)

"That for amendment No. 2104 of the List of Amendments, the following be substituted :—

"That in article 136, for the words 'in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior-most judge of that Court available' be substituted'."

"That for amendment No. 2106 of the List of Amendments, the following be substituted :—

"That in article 136, for the words 'I, A, B., do solemnly affirm (or swear)' the following be substituted :—

"I, A, B, do $\frac{\text{swear in the name of God"}}{\text{solemnly affirm}}$

Pandit Hirday Nath Kunzana : (United Provinces ; General): How does the oath read ? Is it, "I do swear in the name of God, or I do solemnly affirm." or not ? The question is this : Some people may think that the Governor should take the in the name of God. There may however be people in this country who are athiests. (Interruption). (Mr. President read out the oath.) I see that there is an alternative. That is what I wanted to know. Nobody should be compelled to swear in the name of God if he does not want to do so.

Mr. President : No. no.

The question is ;

"That article 136, as amended, stand part of the Constitution."

(The motion was adopted.)

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Article 136, as amended, was added to the Constitution.

Assembly then adjourned till Eight of the clock on Wednesday, the 1st June, 1949.

ARTICLE 137

***Mr. President :** We begin with article 137 today. There is an amendment to this of which notice has been given by Mr. Brajeshwar Prasad, but that is a negative one.

(Amendment No. 2111 was not moved.)

Shri T. T. Krishnamachari (Madras: General) **:** This article cannot be moved in view of the decision that has been made earlier.

Shri Brajeshwar Prasad (Bihar : General) **:** It must be put to the vote of the House.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** It may be put to the vote.

Mr. President : None of the other amendments is going to be moved, I take it.

[Article 137 was deleted from the Constitution]

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* CAD, Vol. VIII, 1st June 1948, p. 487.

ARTICLE 143

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my friend, Mr. T. T. Krishnamachari, had said on tins amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in on the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to take up the point because on this point I can very well satisfy the House by reference to the provisions in the Constitution of Canada and the Constitution of Australia. I do not think anybody in this House would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that. I would like to read section 55 of the Canadian Constitution.

> "*Section 55.*—Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion and subject to provisions of this Act, either assent thereto in the Queen's name or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

Pandit Hirday Nath Kunzru : May I ask Dr. Ambedkar when the British North America Act was passed ?

The Honourable Dr. B. R. Ambedkar : That does not matter at all. The date of the Act does not matter.

Shri H. V. Kamath : Nearly a century ago !

* CAD, Vol. VIII, 1st June, pp. 500-02.

The Honourable Dr. B. R. Ambedkar : This is my reply. The Canandians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government. If they had felt that this provision was not compatible with responsible government, they have even today, as Dominions, the fullest right to abrogate this provision, They have not done so. Therefore, in reply to Pandit Kunzru, I can very well say that the Canadians and the Australians do not think that such a provision is an infringement of responsible government.

Shri Lokanath Misra (Orissa : General) **:** On a point of order, Sir, are we going to have the status of Canada or Australia ? Or are we going to have a Republican Constitution ?

The Honourable Dr. B. R. Ambedkar : I could not follow what he said. If, as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgment, necessary. The only question that arises is……..

Pandit Hirday Nath Kunzru : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

The Honourable Dr. B. R. Ambedkar : I think he has misread the article. I am sorry I do not have the draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers," then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says : "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government. The only question

that arises is, how should we provide for the mention of this discretionary power ? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143 "that except as provided in articles so and so specifically mentioned—articles 175, 188. 2(H) or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (I) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that. I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

Shri H. V. Kamath : Is there no material difference between article 61(1) relating to the President *vis-a-vis* his ministers and this article ?

The Honourable Dr. B. R. Ambedkar : Of course there is, because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

Shri H. V. Kamath : Will it not be better to specify certain articles in the Constitution with regard to discretionary powers, instead of conferring general discretionary powers like this ?

The Honourable Dr. B. R. Ambedkar : I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in the Constitution regarding vesting of the discretionary powers in the Governor.

Shri H. V. Kamath : Why not hold it over ?

The Honourable Dr. B. R. Ambedkar : We can revise. This House is perfectly competent to revise article 143. If after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.

[Two amendments were rejected. Article 143 was added to the Constitution.]

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ARTICLE 144

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That fur clause (1) of article 144, the following be substituted .—

"144. (1) The Chief Minister shall he appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor".

Provided that in the States of Bihar. Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and Backward classes or any other work.

(la) The Council shall be collectively responsible to the Legislative Assembly of the state'."

Shri T. T. Krishnamachari : May I suggest that the Honourable Dr. Ambedkar might vary the wording in clause (la) of article 144 by the addition of the words "Of ministers "to the words "The Council" ?

The Honourable Dr. B. R. Ambedkar : That is all right. It will bring it into line with article 62. I move that amendment.

Shri Mahavir Tyagi : May I know what is the method for the appointment of that particular Minister for Bihar and other places ? Whether the minister will be appointed *by* the Governor on the advice of the Chief Minister—that is clear certainly, because you say "Provided" and this means that whatever we have said before will not apply in the case of these ministers.

The Honourable Dr. B. R. Ambedkar : What it says is among the ministers appointed under clause (1) which means they are appointed by the Governor on the advice of the Chief Minister, one minister will be in charge of this portfolio.

* CAD, Vol. VIII, 1st June 1949, p. 503

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, I beg to move:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In the choice of his ministers and in the exercise of his other functions under the Constitution' be substituted."

Sir, this is nothing but a verbal amendment.

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†The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That clause (*6*) of article 144 he omitted."

Shri Brajeshwar Prasad : Why ?

The Honourable Dr. B. R. Ambedkar : Because we do not want to give more discretionary powers than has been defined in certain articles, we are trying to meet you.

‡Shri Jaspat Roy Kapoor : If any member has any technical objection it is another matter but this is an amendment which is acceptable to Dr. Ambedkar and most other Members whom I have consulted. There seems to be no harm in permission being given to this. If Dr. Deshmukh is opposed to this amendment, of course he will have his say on the merits of it, and he will have an opportunity to convince the house to reject it.

Mr. President: Would that not open up discussion again ?

Dr. P. S. Deshmukh : Yes. If Dr. Ambedkar is prepared to accept it, there is another way out of it. The proviso could be separately put and if it is defeated, it will be deleted.

Mr. President: Yes, that is a way out.

The Honourable Dr. B. R. Ambedkar : I am not accepting the omission of the proviso but I am quite prepared to have the proviso transferred from this article to the Instrument of Instructions.

Pandit Thakur Das Bhargava : May I propose that this article be held over ?

The Honourable Dr. B. R. Ambedkar : Why, after having debated so long ?

Mr. President : The question is whether it should stand here or it should be transferred to the Instrument of Instructions....

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* CAD, Vol. VIII, 1st June 1949, p. 506.

† *Ibid* p. 507.

‡ *Ibid* p. 519.

***Mr. President:** ...Dr. Ambedkar.

***The Honourable Dr. B. R. Ambedkar :** Mr. President, in the course of tills debate on the various amendments moved I have noticed that there are only lour points which call for a reply. The first point raised in the debate is that instead of the provision that the Ministers shall hold office during pleasure it is desired that provision should be made that they shall hold office while they have the confidence of the majority of the House. Now, I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been slated in that fashion or in those terms in any of the Constitutions which lay down a parliamentary system of Government. 'During pleasure' is always understood lo mean that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence of the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is unneccessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. The amendment of my Friend Prof. Saksena, substituting the words "Lower House" I am afraid, cannot be accepted, because under the provisions of the Constitution, it is open to the Prime Minister not only to select his Ministers from the Lower, but also from the Upper House. It is not the scheme that the Minister shall be taken only from the Lower House and not from (he Upper House. Consequently the provision that the Minister shall be appointed for six months, although he is not elected must be MO extensive as to cover both cases, and for that reason I am unable to accept his amendment.

The third amendment which has been considerably debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. In that connection, what I would like to say is tills, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable

* CAD, Vol. VIII, 1st June 1949, p. 520-21.

†*Ibid* p.p. 520-21.

length. On that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what I have said on that occasion.

Shri H. V. Kamath : My honourable Friend Dr. Ambedkar did not accept the amendment on that occasion because in his view it was not comprehensive enough. Now it is more comprehensive.

Mr. President : You have already said all that.

The Honourable Dr. B. R. Ambedkar : The fourth point is the one which have been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced in the Draft Constitution is to be found in the recommendations of the sub-committee on tribal people appointed by the Minorities Committee of the Constituent Assembly. In the report made by that committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular committee. It is said there, that in the Provinces of Bihar, Central Provinces and Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneoulsy of welfare work pertaining to Schedule Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the report of the Tribal Committee which was headed "Statutory Recommendation". It was the intention of this committee that this provision should appear in the Constitution itself, that it should not be relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the other Committee.

With regard to the suggestion of my Friend Mr. Jaipal Singh, that Bombay should be included on account of the fact that as a result of the mergers that have taken place into the Bombay Presidency, the number of tribal people has increased. I am sorry to say that at this stage, I cannot accept it because this is a matter on which it would be necesssary to consult the Ministry of Bombay and unfortunately my Friend the Honourable Mr. Kher who was present in the Constitutent Assembly during the last few days is not here now, and I am therefore not able to accept this amendment.

Shri H. V. Kamath : With reference to my amendment, may I know if Dr. Ambedkar has realised from the view that he expressed previously—if he has recanted ?

Mr. President : I do not think that kind of cross-examination can be allowed. Now I shall take up the amendments.

There are two amendments moved by Mr. Tahir and Mr. Mohd. Ismail Nos. 2174 and 2175 which relate to this article 144, clause (l).

If Dr. Ambedkar's amendment No. 2165 is carried, probably they will drop automatically. Therefore, I would put Dr. Ambedkar's amendment to vote.

[Dr. Ambedkar's all amendments mentioned hereinbefore were adopted, rest were negatived. Article 144, as amended was added to the Constitution.]

ARTICLE 145

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The Honourable Dr. B. R. Ambedkar : I do not think I need add anything to the debate that has taken place. All that I want to say is this : I am prepared to accept the amendment of Mr. Naziruddin Ahmad No. 2210.

***Mr. President :** Then I put Amendment No. 2210 which includes within itself 2211 also.

[Following amendment of Naziruddin Ahmed was accepted by Dr. Ambedkar and the House.]

"That for clauses (2) and (4) of article 145, the following be substituted :—

'(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine'."

[Article 145, as amended was added to the Constitution.]

ARTICLE 146

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†The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Sir, I do not accept the amendment. Article 146 is only a logical consequence of article 130. Article 130 says that the executive power of the State shall be vested in the Governor. That being so, the only logical conclusion is that all expression of executive action must be in the name of the Governor as is provided for in article 146.

In regard to the observations made by my Honourable Friend Prof. K. T. Shah that under the old regime, all executive action was expressed in the name of the Government of India, my reply is that that was due

* CAD, Vol. VIII, 1st June 1949, p. 528

† *Ibid,* 2nd June 1949. P. 532

to the fact that under the old system, the civil and military Government of India was vested not in the Governor-General, but in the Governor-General in Council, and consequently, all action had to be expressed in the name of the Government of India. Today, the position has altogether changed so far as article 130 is concerned.

[No amendment was accepted Article 146 was added to the constitution.]

ARTICLE 147

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I must say that I am considerably surprised at the very excited debate which has taken place on this article 147. I should like, at the very outset, to remind the House that this article 147 is an exact reproduction of article 65 which this House has already passed. Article 65 gives the President the same power as article 147 proposes to give to the Governor. Consequently, I should have thought that all the debate that took place, when article 65 was before the House, should have sufficed for the purpose of article 147.

Shri H. V. Kamath : May I remind the Honourable Dr. Ambedkar that the President is elected and the Governor nominated..... (Interruption).

The Honourable Dr. B. R. Ambedkar : As the debate has taken place and as several Members of the House seem to think that there is something behind this article 147 which would put the position of the Ministers and of the Cabinet in the provinces in jeopardy, I propose to offer some explanation.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction. This article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this article, the Governor is bound to accept the advice of the Ministry. That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may

* CAD, Vol. VIII, 2nd June 1949, pp. 545-547.

overrule the Ministry. Therefore, the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

Shri H. V. Kamath : Won't he be able to delay or obstruct…….?

The Honourable Dr. B. R. Ambedkar : My friend will not interrupt while I am going on At the end, he may ask any question and if 1 am in a position to answer, I shall answer.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because, the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary : no good at all. He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has, namely to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider—I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information ? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution,—and I know this has happened in many cases, in many provinces today,—that no paper need be sent to the Governor, how is the Governor to discharge his functions ? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the -Governor the power to call for any

information. If I may say so, I think I might tell the House how the affairs are run at the Centre. So far as my information goes all cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come to the Cabinet, also go to the Governor-General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet ? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticisms levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform, what I say, not functions because he has none, but the duties which every good Governor ought to discharge. (*Cheers.*)

Shri H. V. Kamath : May I ask Dr. Ambedkar some questions ?

Mr. President: What is the use of asking question now ? You had your chance.

Shri H. V. Kamath : Dr. Ambedkar said that I could put questions at the end of his speech.

Mr. President : I do not like this practice of putting questions at the end of the discussions. All questions have been answered. I will now put the article to vote as there is no amendment to this.

Mr. President : The question is :

"That article 147 stand part of the Constitution."

The motion was adopted.

Article 147 was added to the Constitution.

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ARTICLE 151

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***Mr. President :** 2308.—Dr. Ambedkar.

The Honourable Dr. H. R. Ambedkar : Sir I move :

"Thai in clause (2) of article 151, for the words 'third year' the words 'second year' he substituted."

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†The Honourable Dr. B. R. Ambedkar : The article has been passed that the Second Chamber shall be there. This article deals only with how the Members will re-elect themselves.

Prof. Shibban Lal Saksena : We have to decide whether a particular Council should live for nine years or six years, and that will depend upon the composition of the Council. The composition will determine the period al the end of which one-third of the members should retire.

Mr. President : That does not depend on the composition of the Council. Whatever may be the life of the House, the composition will be according lo the decision we may take on article 150.

Prof. Shibban Lal Saksena : Well Sir, I bow to your ruling....

Then it has been said that one-third of the Council will retire every third year. I am glad Dr. Ambedkar has now proposed that the period will now be two years instead of three. That will make the life of the Council only six years which is almost equal to the life of the Assembly. It also ensures greater freshness to the Council. I therefore, support the amendment of Dr. Ambedkar.

Mr. President : Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I accept Mr. Gupte's amendment.

Mr. President : Now I shall put Mr. Gupte's amendment which has been accepted by Dr. Ambedkar, to vole. It becomes the original amendment.

The question is :

"That with reference to amendment No. 2304 of the List of Amendment, after clause (1) of article 151, the following proviso be inserted :

'Provided that the said period may. while a Proclamation of Emergency is in operation, he extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.' "

The amendment was adopted.

Mr. President : Mr. Brajeshwar Prasad's amendment.

The amendment was, by leave of the Assembly, withdrawn.

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*CAD, Vol. VIII, 2nd June 1948, p. 548

† *Ibid.*, pp. 549-50.

Mr. President: Then I put Dr. Ambedkar's amendment, No. 2308.

[Already mentioned.]

The amendment was adopted.

Article 151, as amended, was added to the Constitution.

ARTICLE 152

***Mr. President:** Then we come to article 152. To this article, there is the amendment of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for article 152, the following be substituted :-—

152. *Qualification for membership of the State Legislature.*—A person shall not he qualified lo be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India;

(b) is. in the case of a seat in a Legislative Assembly, not less than twenty-live years of age and, in the case of a seat in the Legislative Council, not less than thirty-five years of age, and

(c) possesses such other qualifications as may lie prescribed in that a behalf by or under any law made by the Legislature of the State'."

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† **The Honourable Dr. B. R. Ambedkar:** Sir, I accept the amendment moved by Shrimati Purnima Banerji. With regard to the fear that she expressed about clause (c) that this clause might enable the prescription of property qualifications by Parliament for candidates, I certainly can say that such is not the intention underlying sub-clause (c). What is behind this clause is the provision of such disqualifications as bankruptcy, unsoundness of mind, residence in a particular constituency and things of that sort. Certainly there is no intention that the property qualification should be included as a necessary condition for candidates.

Then, with regard to the amendment of Professor K. T. Shah about literacy. I think that is a matter which might as well be left to the Legislatures. If the Legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it.

Sir, there is only one point about which 1 should like to make a specific reference. Sub-clause (c) is in a certain manner related to articles 290 and 291 which deal with electoral matters. We have not passed those articles.

If during the course of dealing with articles 290 and 291, the House comes to the conclusion that the provision contained in clause (c) should be prescribed by the law made by Parliament, then I should like to

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*CAD, Vol. VIII, 2nd June 1948, p. 550.

† *Ibid.,* pp. 553-54.

reserve for the Drafting Committee the right to reconsider the last part of sub-clause (c). Subject to that, I think the article, as amended, may be passed.

[Article 152 as amended was added to the Constitution]

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ARTICLE 153

The Honourable Dr. B. R. Ambedkar : Sir. I move :

"That clause (3) of article 153 be omitted."

This clause is apparently inconsistent, with the scheme for a Constitutional Governor.

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†Shri Gopal Narain : (United Provinces : General) : Mr. President, Sir, before speaking on this article, I wish to lodge a complaint and seek redress from you. I am one of those" who have attended all the meetings of this Assembly and sit from beginning to the end, but my patience has been exhausted now, I find that there are a few Honourable members of this House who have monopolised all the debates, who must speak on every article, on every amendment and every amendment to amendment. I know, Sir, that you have your own limitations and you cannot stop them under the rules, though I see from your face that you also feel sometimes bored, but you cannot stop them. I suggest to you, Sir, that some time-limit may be imposed upone some Members. They should not be allowed to speak for more than two or three minutes. So far as this article is concerned, it has already taken fifteen minutes, though there is nothing new in it, and it only provides discretionary powers to the Governor. Still a member comes and oppose it. I seek redress from you, but if you cannot do this, then you must allow us at least to sleep in our seats or do something else than sit in this House. Sir, I support this article.

Mr. President: I am afraid I am helpless in this matter. I leave it to the good sense of the Members.

Shri Brajeshwar Prasad : (Rose to speak).

Mr. President : Do you wish to speak after tins ? (*Laughter*)

The Honourable Dr. B. R. Ambedkar : I do not think I need reply. This matter has been debated quite often.

[Except Dr. Ambedkar's amendment, none else was accepted. Article 153 was added to the Constitution.]

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*****CAD, Vol. VIII, 2nd June 1948, p. 555.

† *Ibid.,* p. 557.

ARTICLE 153-A

***Mr. President :** Does any one wish to say anything about this amendment ?

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment.

[The amendment of Prof K. T. Shah was negatived and Article 154 was added to the Constitution.]

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ARTICLE 160

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†**Mr. President:** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Article 160 was adopted and added to the Constitution.

NEW ARTICLE 163-A

‡**Mr. President:** There is the new article 163-A which has to be moved. That is amendment No. 39 List I.

The Honourable Dr. B. R. Ambedkar : Sir, it has to be held over.

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ARTICLE 165

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Shri T. T. Krishnamachari : The Chair has on previous occasions permitted Dr. Ambedkar to move such amendments, and I think the same practice may be continued and it may be moved formally.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 165 for the words 'a declaration' the words 'an affirmation or oath' be substituted."

The motion was adopted.

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ARTICLE 166

#The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after clause (1) of article 166. the following new clause be inserted :—

'(la) No peson shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then at the expiration of .such period as may be specified in rules made by the President that person's seat in the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States'."

This is a clause which provides for a case where a person is a member of the Legislatures of two States; the former clause dealt with a person who is a member of the Legislature of a State and of Parliament.

*CAD, Vol. VIII, 2nd June 1948, p. 558.

† *Ibid.,* p. 564.

‡ *Ibid.,* p. 566.

Ibid., p. 567.

Mr. President : There is the amendment of Mr. Naziruddin Ahmad, No. 2403, hut that is covered by the one now moved. No. 2404.

The Honourable Dr. B. R. Ambedkar : I move :

"Thai clause (2) of article 166 be deleted."

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***Mr. President:** I shall put the amendments moved by Dr. Ambedkar, one by one.

Shri H. V. Kamath : Will not Dr. Ambedkar answer the point raised by me ?

The Honourable Dr. B. R. Ambedkar : I do not consider it necessary.

[All amendments by Dr. Ambedkar mentioned hereinbefore were accepted. Article 166, was added to the Constitution.]

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ARTICLE 167

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†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for sub-clause (*d*) of clause (1) of article 167, the following be substituted :—

'(*d*) if he has ceased to he a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State'."

Shri Mahavir Tyagi : What will be our position in regard to England, now that we are in the Commonwealth ? Will our allegiance to the King be also a disqualification ?

Mr. President: That is a matter of interpretation of the Constitution.

The Honourable Dr. B. R. Ambedkar : That will be dealt with by the Nationality Act.

(Amendments Nos. 2420 to 2423 were not moved.)

Shri H. V. Kamath : I think my amendment No. 2424 is a purely verbal amendment and I leave it to the Drafting Committee.

Mr. President : I think it is of a substantial nature.

Shri H. V. Kamath : If that be so, I will move it.

I move :

"That in sub-clause (*d*) of clause (I) of article 167, after the semi-colon at the end, the word 'or' be added."

...Whether the word 'and' is deleted, or in its place 'or' is substituted, more or less comes to the samething, according to my untrained mind. Thai is why I said I leave it to the wise men of the drafting Committee, because I am a mere novice in these matters. I

*CAD, Vol. VIII, 2nd June 1948, p. 568.

†*Ibid*., pp. 570-71.

thought 'or' would be more appropriate, because if any one of these disqualifications arises—if a person disqualified for any of these reasons—then the article will apply.

Mr. President : Dr. Ambedkar might consider it.

Shri H. V. Kamath : As I said, I leave the decision to the wise men of the drafting committee.

The Honourable Dr. B. R. Ambedkar : I think it is perfectly all right, Sir.

Mr. President : Won't they read cumulatively ?

Honourable Dr. B. R. Ambedkar : No, Sir, they won't read cumulatively.

Mr. President : If 'or' is added it will put it beyond all doubt.

The Honourable Dr. B. R. Ambedkar : I do not think it necessary.

(Amendments Nos. 2425, 2426 and 2427 were not moved.)

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***The Honourable Dr. B. R. Ambedkar :** I rise only for the sake of my Friend. Mr. Tyagi, as he has asked me one or two pointed questions. As he himself says that he is an illiterate, I can very well understand his difficulty in understanding the word 'adherence'. I would therefore explain to him what the word 'adherence' means. When one country is invaded by another country, what happens is this that the local people either out of fear or out of martial law sometimes give obedience to the laws made by the military governor who acts in the name of the invading country. Such a conduct is often excused while the invasion countinues and the military occupation continues. It often happens that when there is no real necessity to obey the invader or the military governor, either because there has been a relaxation of control or because the hostility has ceased, certain people still continue to render obedience to the military governor or the invader. Their conduct under law is referred to as 'adherence'. It is distinct from acknowledging. It is to protect this kind of case that the word 'adherence' has been used.

Mr. Friend, Mr. Tyagi, was also very much agitated over the question of who are to be regarded as foreign countries. I am sure about it that it is not the intention of my Friend, Mr. Tyagi, to involve me in any discussion about Commonwealth relationship which is a matter which has already been discussed and disposed of in the House, but I would like to tell him that I propose to introduce an amendment to article 303, sub-clause (1), to define what would be regarded as foreign country,

*CAD, Vol. VIII, 2nd June 1948, pp. 573-74.

and if my friend, Mr. Tyagi has got Volume II of the printed List of amendments, he will see what the proposed amendment is. The proposed amendment gives power to the President to declare what are not foreign countries, and that declaration would govern whether a particular country is or is not a foreign country. For the benefit of my Friend, Mr. Tyagi, I would also like to add one word of explanation. Many people seem to be rather worried that when a country is declared not to be a foreign country under the proposed amendment, or the Commonwealth Agreement, all such people who are inhabitants of those countries would *ipso facto* acquire all the rights of citizenship which are being conferred by this Constitution upon the people of this country. I want to tell my friends that no such consequence need follow. The position under commmonwealth relationship would be this; In all the dominion countries, the residents would be divided into three categories, citizens, aliens and a third category of what may be called Dominion residents residing in a particular country. All that would mean is this, that the citizens of the dominions residing in India would not be treated as aliens, they would have some rights which aliens would not have, but they would certainly not be entitled, in my judgment, to get the full rights of citizenship which we would be giving to the people of our country. I hope my friend, Mr. Tyagi, has got something which will remove the doubts which he has in his mind.

Shri Mahavir Tyagi : I heartily thank you for the interesting speech that you have made.

[The amendments moved by Dr. Ambedkar and that of Shri T. T. Krishnamachari were carried. Article 167, was accordingly added to the Constitution]

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ARTICLE 169

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***The Honourable Dr. B. R. Ambedkar :** (Bombay : General) : Sir, not very long ago this very matter was debated in this House, when we were discussing the privileges of Parliament and I thought that as the House had accepted the article dealing with the privileges and immunities of Parliament, no further debate would follow when we were really reproducing the very same provision with regard to the State legislature. But as the debate has been raised and as my Friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

*CAD, Vol. VIII, 3rd June 1949, pp. 582-84.

I do not know how many Members really have a conception of what is meant by privilege. Now the privileges, which we think of, fall into two different classes. There are first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

Dr. P. S. Deshmukh : We do not want any enumeration of the privileges nor any lecture on how they are exercised. What we want **to** know is whether it is not possible to embody them into the Constitution. That is the real question.

Mr. President : He is dealing with the matter.

The Honourable Dr. B. R. Ambedkar : I am mentioning the difficulty. If we were only concerned with these two things, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges which we speak of in relation to Parliament are much wider than the two privileges mentioned and which relate to individual members. The privileges of Parliament extends, for instance, to the rights of Parliament as against the public. Secondly, they also extend to right as against the individual members. For instance, under the House of Commons' powers and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters—e.g., to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

Pandit Thakur Das Bhargava : We are only concerned with the privileges of members and not with the privileges of Parliament.

The Honourable Dr. B. R. Ambedkar : Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard lo the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament, So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether the members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-live pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as Honourable Members will know, the 1935 Act conferred no

privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except for the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. Thai being so, I suggest that this article be adopted in the way in which we have drafted it.

Dr. P. S. Deshmukh : The honourable Member has said nothing about my other suggestion.

The Honourable Dr. B. R. Ambedkar : As I said, if you want to categorise and set out in detail all the privileges and immunities it will take not less than twenty-five pages....*

Mr. President: Dr. Deshmukh's suggestion was that in this article which deals with the legislatures of the States we might only say that the members of a State legislature will have the same privileges as Members of our Parliament.

The Honourable Dr. B. R. Ambedkar : That is only a drafting suggestion. For instance, it can be said that most of the articles we are adopting for the State Legislatures are more or less the same articles which we have adopted for the Parliament at the centre. We might as well say that in most of the other cases the same provisions will apply to the State Legislature but as we have not adopted that course, it would be rather odd to adopt it in this particular case.

Mr. President : I shall first put the amendment of Mr. Jaspat Roy Kapoor to the House.

"That in clause (4) of article 169 alter the words 'a House of the Legislature of a State' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Article 169, as amended, was added to the constitution.

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*Dots indicate interruption

ARTICLE 170

***Shri L. Krishnaswami Bharathi** (Madras : General) **:** Sir, I beg to move :

"That in article 170, after the winds 'so made' the words 'salaries and' he inserted."

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†Mr. Naziruddin Ahmad : We have not had notice that article 109 will be taken up today.

The Honourable Dr. B. R. Ambedkar : What does it matter

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ARTICLE 109

‡The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That in article 109 for the words 'if in so far as' the words 'if and in so far as' be substituted."

(Amendments Nos. 1896 and 1897 were not moved.)

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#The Honourable Dr. B. R. Ambedkar : I do not think it is necessary to say anything. I accept Mr. T. T. Krishnamachari's amendment

(The amendment was as under):—

"That for the proviso to article 109, the following he substituted :—

'Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treAty agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute."

[The amendment was adopted along with that of Dr. Ambedkar as shown earlier.]

Article 109, as amended, was added to the Constitution.

ARTICLE 110

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@ **Mr. President:** Does No. 111 cover cases of criminal nature also ?

Mr. Naziruddin Ahmad : No.

The Honourable Dr. B. R. Ambedkar : We are making provision for that by a separate article.

Mr. Naziruddin Ahmad : I am very grateful to you Sir, for pointing out that article 111 does not make any provision for criminal case……

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*CAD, Vol. VIII, 3rd June 1948, p. 584.

†*Ibid.,* p. 588.

‡*Ibid.,* p. 588.

#*Ibid.,* p. 590.

@*Ibid.,* pp. 593-94.

***The Honourable Dr. B. R. Ambedkar :** I move :

"That in clause (3) of article 110, for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, hut also, the words on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court,' be substituted."

The existing language is somewhat awkward and that is the reason why we are putting it in a different way so that it may read without any difficulty. The clause now will read as follows :—

"Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and with the leave of the Supreme Court, on any other ground."

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†The Honourable Dr. B. R. Ambedkar : Sir, I cannot help saying that the debate has really gone off the track and the Members have really wandered far away from the immediate point raised by my Friend Mr. Naziruddin Ahmed in his amendments Nos. 1904 and 1907. All that is before us is amendment No. 1904. According to that amendment what my friend Mr. Naziruddin Ahmed wants to do is to suggest that the last few words of sub-clause (1) of article 110, namely the words as to the interpretation of this Constitution should be deleted. I am sorry I was not able to hear exactly the grounds which he urged for the deletion of the phrase 'as to' the interpretation of this Constitution'. Although I tried hard to catch his very words, all that I could hear him say as the reason for moving amendment No. 1904 was that he felt that those words were words of limitation, and that if those words remained there would be no provision for an appeal to the Supreme Court in cases where a question of constitutional law did not arise.

Mr. Naziruddin Ahmad : I believe I am right.

The Honourable Dr. B. R. Ambedkar : No question of certificate arises.

Mr. Naziruddin Ahmad : You wanted to delete that yesterday.

The Honourable Dr. B. R. Ambedkar : I think my honourable Friend Mr. Naziruddin Ahmad has probably n(H grasped the scheme of the articles which deal with the Supreme Court.

Mr. Naziruddin Ahmad : That is your stock argument.

The Honourable Dr. B. R. Ambedkar : We have in this Draft Constitution made separate provision for appeal in cases where

*CAD, Vol. VIII, 3rd June 1948, p. 595.

†*Ibid.,* pp. 612-14.

questions of constitutional law arise, and cases where no such question arises. Appeals where constitutional points arise are provided for in article 110. Questions where Constitutional law are not involved are provided for in article 111. The reason why this separation is made between the two sorts of appeals is also probably not realised by my Friend Mr. Naziruddin Ahmed. I should therefore like to make that point clear. There is going to come an amendment to article 121 which deals with the rules to be made by the Supreme Court. I have tabled an amendment to clause (2) of article 121 which says that wherever an appeal comes before the Supreme Court and it involves questions of Constitutional law, the minimum number "of judges, which would sit to hear such a case shall be five, while in other cases of appeals where no question of Constitutional law arises, we have left the matter to the Supreme Court to constitute the Bench and define the number of judges who would be required to sit on it by rules made thereunder. Now that is an important distinction, namely, that a Constitutional matter coming before the Supreme Court will be decided by a number of judges not less than five, while oilier cases of appeals may be decided by such number of judges as may be prescribed by rule. My friend therefore will understand that the existence of the words 'as to the interpretation of this Constitution' does not in any way debar appeals other than those in which Constitutional law is involved, and he will also understand why we propose to put these two types of appeals in two separate articles, the number of judges being different in the two cases.

Now I come to the other point which has been debated at great length, namely, whether the Supreme Court should have criminal jurisdiction or not. As I said, so far as article 110 is concerned and the amendment moved by my Friend Mr. Naziruddin Ahmad is concerned, all this debate is absolutely irrelevant and beside the point and really ought not to influence our decision so far as article 110 is concerned. But in as much as a great deal of debate has taken place, I would like to say a few words. Members will find that there is provision in article 110 for a criminal matter coming before the Supreme Court if that matter involves a question of Constitutional law. Therefore that is one of the ways by which criminal matters may come up and the criminal matters that may come up under article 110 may be very small matters.

Again, there is article 112 where the jurisdiction of the Privy Council

has been vested in the Supreme Court. For the moment I would like to draw the attention of honourable Members to the words 'decree or final order in any case or matter whether civil or criminal' so that the Supreme Court may, by special leave, draw to itself even a criminal matter under the provisions of article 112. I have noticed that there is considerable feeling among criminal lawyers that there ought to be a provision.....*

Pandit Lakshmi Kanta Maitra : Practising criminal law.

The Honourable Dr. B. R. Ambedkar : I am sorry, 'practising criminal law', that just as article 111 confers upon the Supreme Court powers of hearing civil appeals, civil only, there ought to be a conferment of power upon the Supreme Court to hear criminal appeals, if not all appeals, at least appeals of a limited character such as involving death sentences. Now, I do not want to say that there is no force in the argument that has been used in support of this plea that the Supreme Court should have criminal jurisdiction but the question is how is it to be done ? Should we do it by a specific clause in the Constitution itself that in the following matter there shall be right to appeal to the Supreme Court, or should we permit Parliament to confer criminal jurisdiction of an appellate sort upon the Supreme Court ? I am of the opinion for the moment—I do not wish to dogmatise nor do I wish to say anything positive at this stage; I have an open mind although, if I may say so, it is not an empty mind—that it might be enough at this stage to confer upon Parliament the power to vest the Supreme Court with jurisdiction in matters of criminal appeals. Parliament may then, after due consideration, after investigation, after finding out how much work there will be for the Supreme Court if it is conferred jurisdiction in criminal matters and how much work it will be possible for the Supreme Court to handle, having regard to the number of judges that the finances of this country could provide to cope with that work—I think it would be much better to leave it to Parliament because this is a matter which would certainly require some kind of statistical investigation. My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can made, I would much rather support the abolition of the death sentence, itself. (*Hear, hear.*) That, I think, is the proper course to follow, so that it will end this controversy. After

*Dots indicate interruption.

all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that, having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

***Pandit Lakshmi Kanta Maitra :** All the criminal courts also.

The Honourable Dr. B. R. Ambedkar : I think we ought to confine ourselves to the amendment moved to article 110 and the amendments moved by my Friend Mr. Naziruddin Ahmed.

* * * * *

[Following amendments were adopted.]

(1) "That in clause (1) of article 110. for the word 'Stale' the words 'the territory of India' be substituted."

(2) "That in clause (3) of article 110. for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, but also,' the words 'on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court' be substituted."

[Article 110, as amended, was added to the Constitution.]

ARTICLE 111

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, utter the words 'twenty thousand rupees', the words 'or such other sum as may be specified hi this behalf by Parliament by law,' be inserted."

* * * * *

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That to clause (1) of article 111 the following proviso be added :—

"Provided that no appeal shall lie to the Supreme Court from the judgment, decree or order of one Judge of a High Court or of one Judge of a Division Court thereof, or of two or more Judges of a High Court, or of a Division Court constituted by two or more Judges of a High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being.'"

* * * * *

‡The Honourable Dr. B. R. Ambedkar (Bombay ; General)**:** Sir, I move :

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which

*CAD, Vol. VIII, 2nd June 1949, p. 615.

†*Ibid.,* 3rd Tune 1949, p. 617.

‡*Ibid.,* 6th June 1949, p. 620.

has been wrongly decided', the words 'a substantial question of law as to the interpretation of the Constitution has been wrongly decided' be substituted."

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments : one is the amendment moved by my Friend Prof. Shibban Lai Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. 1 of the Fourth Week. Before I actually deal with the point that is raised by these two amendments, I should like to make one or two general observations.

The first observation that I propose to make is this. Article 111 is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore, remember that so far as article 111 is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again, Sections 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make is this : that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very

*CAD, Vol. VIII, 6th June 1949, p. 631.

†*Ibid*., pp. 631-32.

beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the Provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgment of the High Court. Therfore, the House will realize that these sections which deal with the right of appeal from the final order, decree and judgment of the High court have history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently, in my judgment, it would require a very powerful argument in support of a plea that we should now, white enacting a provision for the constitution of the Supreme Court, disturb a position which has stood the test of lime for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of dimunition or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech, namely, Prof. Shibban Lai Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this : that (he Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go to the Privy Council, the last part of clause (I) of article 111, which is (c), ought to remain as it is and Parliament

should not have power to dabble with it because it really is a matter not so much of law as a mailer of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my friend Prof. Saksena were to go through, two things will happen. One thing that will happen has already been referred to by my friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is reallly a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

[In all 4 amendments were adopted, one was rejected. Article 111, as amended, was added to the Constitution]

ARTICLE 112

***The Honourable Dr. B. R. Ambedkar :** I do not think there is anything for me to say.

Mr. President : The question is :

"That in article 112, the words 'except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply' be deleted."

The amendment was adopted.

Article 112, as amended, was added to the Constitution.

NEW ARTICLE 112-A

†Mr. President: There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted :—

Review of judgments or order passed by the Supreme Court.

'112-A Subject to the provisions of any law made by Parliament or any rule made under article 121 of this Constitution the Supreme Court shall have power to review any judgment pronounced or order passed by it.'"

Sir, the draft Constitution, as it stands now,.....‡

Prof. Shibban Lal Saksena : On a point of order, Sir, amendment No. 1932 has not been moved.....

Mr. President: That has not been moved : I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928 ? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President: I have already said that I have taken it as a fresh article.

The Honourable Dr. B. R. Ambedkar : The Draft Constitution contains no provision for review of its judgments. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras : General) **:** Sir, I am afraid that the drafting of this is not quite as happy as it should be For one tiling, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that

*CAD, Vol. VIII, 6th June 1949, p. 640.

†*Ibid.,* pp. 640-41.

‡Dots indicate interruption.

power shall be limited by rules made by the Supreme Court. I think it is bad law. Parliament has no right to interfere even with its ordinary power of review.

Mr. President : This refers to its own decisions.

The Honourable Shri K. Santhanam : I am coming to that. I think there is a greater reason why the Supreme Court should be left unfettered to review its own judgment. In these two respects, the tiling is rather defective. I would suggest to Dr. Ambedkar to see if it should go in this form or whether the form should not be reconsidered.

The Honourable Dr. B. R. Ambedkar : I think my friend Mr. Santhanam is completely mistaken in the observations that he has made. First of all, we are not conferring any power to the Supreme Court to make any rules. That power is being delegated by article 121. If he refers to that article, he will see that it reads thus :

> "Subject to the provisions of any law made by Parliament, the Supreme Court may from tune to time with the approval of the President, make rules for regulating generally the practice and procedure of the Court including, etc., etc."

Therefore it is not correct to say that we are giving power to the Supreme Court. The power is with the Supreme Court and is to be exercised with the approval of President. Another tiling which has misled Mr. Santhanam is that he has not adverted to the fact that I proposed by amendment 42 in List I to add one more clause to article 121 which is (bb) and which deals with the rules to be made with regard to review. Therefore, having regard to these two circumstances, it is necessary that the review power of the Supreme Court must be made subject both to article 121 and also the amendment contained in No. 42.

[Article 112-A was adopted and added to the Constitution.]

ARTICLE 113

Mr. President : No. 113.

Shri T. T. Krishnamachari : The house has expressly excluded reference to State in Part III of the First Schedule all along and therefore this article may not be necessary. You can formally put it to the House so that the House can negative it.

The Honourable Dr. B. R. Ambedkar : That is so.

[Article 113 was deleted from the Constitution.]

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ARTICLE 114

Mr. President : Article 114. There is one amendment by Mr. Gupte.

(The amendment was not moved.)

"Does anyone wish to speak ?

***The Honourable Dr. B. R. Ambedkar :** My attention has been drawn by my friend Shri Alladi Krishnaswami Ayyar that the articles of this Draft Constitution dealing with powers of the Supreme Court do not expressly provide for appeals in income-tax cases. I wish to say that I am considering the matter and if on examination it is found that none of the articles could be used for the purpose of conferring such an authority upon the Supreme Court, I propose adding a special article dealing with that matter specifically. But this article may go in.

[Article 114 was added to the Constitution.]

ARTICLE 121

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for clause (3) of article 121, the following be substituted :-

'(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 110 of this Constitution save in accordance with an opinion also delivered in open court.'"

Sir, I shall move also amendment No. 1966 :

"That for clause (4) of article 121, the following be substituted :—

'(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case hut nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.'

* * * * *

‡**The Honourable Dr. B. R. Ambedkar :** Mr. President, I regret very much that I cannot accept the amendment moved by my Honourable Friend Mr. Lari. It seems to me that he has completely misunderstood what is involved in his amendment.

The reason why it is necessary to make the rule-making power of the Supreme Court subject to the approval of the President is because the rules may, if they were left entirely to the Supreme Court, impose a considerable burden upon the revenues of the country. For instance, supposing a rule was made that a certain matter should be heard by two Judges. Thai may be a simple rule made by the Supreme Court. But, undoubtedly, it would involve a burden on public revenues. There

*CAD, Vol. VIII, 6th June 1949, p. 542.

† *Ibid., p.* 645.

‡*Ibid.,* pp. 649-50.

are similar provisions in the rules, for instance, regarding the regulation of fees. It is again a matter of public revenue. It could not be left to the Supreme Court. Therefore, my submission is that the provisions contained in article 121 that the rules should be subject to the approval of the President is the proper procedure to follow. Because, a matter like this which imposes a burden upon the public revenues and which burden must be financed by the legislature and the Executive by the imposition of taxation could not be taken away out of the purview of the Executive.

I may also point out that the provisions contained in article 121 are the same as the provisions contained in article 214 of the Government of India Act, 1935 relating to the Federal Court and article 224 relating to the High Courts. Therefore, there is really no departure from the position as it exists today. With regard to the comments made by my Honourable Friend, Mr. Santhanam relating to amendment No. 42 moved by Honourable Friend. Mr. T. T. Krishnamachari, I am afraid, I have not been able to grasp exactly the point that he was making. All that, therefore, I can say is this, that this matter willl be looked into by the Drafting Committee when it sits to revise the Constitution, and if any new phraseology is suggested, which is consistent with the provisions in the article which we have passed conferring power of review by the Supreme Court, no doubt it will be considered.

There is one other point to which I would like to refer and that is amendment No. 43. In amendment No. 43, which has been moved by my Honourable Friend, Shri Alladi Krishnaswami Ayyar, and to winch I accord my wholehearted support, there is a proviso which says that if a question about the interpretation of the Constitution arises in a matter other than the one provided in article 110, the appeal shall be referred to a Bench of live judges and if the question is disposed of it will be referred back again to the original bench. In the proviso as enacted, a reference is made to article 111, but I quite see that if the House at a later stage decides to confer jurisdiction to entertain criminal appeals, this proviso will have to be extended so as to permit the Supreme Court to entertain an appeal of this sort even in a matter arising in a criminal case. I, therefore, submit that this proviso also will have to be extended in case the House follows the suggestion that has been made in various quarters that the Supreme Court should have criminal jurisdiction.

[5 amendments including 2 of Dr. Ambedkar were adopted. One was negatived. Article 121 as amended was added to the Constitution.]

ARTICLE 191

***The Honourable Dr. B. R. Ambedkar :** Sir, I formally move.

"That in sub-clause (a) of clause (I) of article 191, for the words 'the High Court of East Punjab, and the Chief Court in Oudh' the words 'and the High Courts of East Punjab, Assam and Orissa' be substituted."

Sir, I move:

"That with reference to amendments Nos. 2567 and 2570 of the List of Amendments, for article 191 the following article be substituted :—

'191. (1) There shall be a High Court for each State.

(2) For the purposes of this Constitution the High Court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

High Courts for State

(3) The provisions of this Chapter shall apply to every High Court referred to this article'."

Shri T. T. Krishnamachari : We might take up the discussion of this amendment first because if this is accepted by the House all the other amendments will be unnecessary. This alters the entire contour of the article while, it also simplifies it.

Mr. President : There are some amendments of which I have got notice, I shall run over them and see.

(Amendments Nos. 2568 to 2577 were not moved.)

Mr. President : There is therefore no other amendment except the one moved by Dr. Ambedkar. Does anyone wish to say anything about the amendment or the article ?

The amendment was adopted.

[Article 191, as amended, was added to the Constitution.]

ARTICLE 192

(Amendments 2578 to 2580 were not moved.)

†Mr. President : Amendment No. 2581 is in Dr. Ambedkar's name. This has to be formally moved.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move :

"That in the proviso to article 192, the words beginning with 'together with any' and ending with 'of this chapter' be deleted, and after the word 'six' the words 'from time to tune' be inserted."

Sir, I move :

"That with reference to amendment No. 2581, of the List of Amendments, for article 192. the following new articles be substituted :—

High Courts of Records	192. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

*CAD, Vol. VIII, 6th June 1949, p. 656.

† *Ibid.,* p. 657.

Constitution of High Courts

'192-A. Every High Court shall consist of a chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

"Provided that the judges so appointed shall at no time exceed in number such maximum at the President may. from time to time, by order fix in relation to that Court.'"

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ARTICLE 193

***Mr. President :** We were dealing with article 193 yesterday. We shall now resume consideration of that article. One amendment was moved but there are several other amendment. There is another amendment No. 2592 which is in the name of Dr. Ambedkar which, I think, will cover all these amendments except about the question of age. So I think that if Dr. Ambedkar moves his amendment first, probably it may not be necessary to take up these other amendments with regard to matters other than the age. With regard to the age, we may take up that question separately.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** I am not moving that amendment.

Mr. President : Then we shall have to take up the other amendments.

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†The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move:

"That with reference to amendment No. 2610 of the List of amendments, in clause (c) of the proviso to clause (1) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the first Schedule' he inserted."

Sir, the object of this amendment is to remove all distinctions between provinces and Indian States so that there may be complete interchangeability between the incumbents of the different High Courts.

Sir, I formally move amendment No. 2614 in the List of Amendment.

"That in sub-clause (*a*) of clause (2) of article 193 for the word 'State' the words 'State for the time being specified in the first Schedule 'be substituted.'"

Sir, I move :

"That with reference to amendment No. 2614 of the List of amendments, in sub-clause (*a*) of clause (2) of article 193 the words 'in any State in or for which there is a High Court' the words 'in the territory of India' be substituted."

"That with reference to amendment No. 2614 of the List of amendments, in sub-clause (*b*) of clause (2) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

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*CAD, Vol. VIII, 7th June 1049, p. 661.

†*Ibid.,* pp. 664-65.

"That with reference to amendment No. 2614 of the List of the amendments, in sub-clause (b) of Explanation I to clause (2) of article 193, for the words 'in a State for the time being specified in Part I or Part II of the First Schedule' the words 'in the territory of India' be substituted."

"That with reference to amendment No. 2614 of the List of Amendments, in clause (*h*) of Explanation I to clause (2) of article 193 for the words 'British India' the word 'India' be substituted."

"That with reference to amendment no. 2622....."

Mr. President : Before moving that, you may formally move amendment No. 2622.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move:

"Thai for Explanation II lo clause (2) of article 193, the following be substituted :—

'Explanation II.—In sub-clauses (*a*) and (*b*) of this clause, the expression 'High Court' with reference to a State for the lime being specified in Part HI of the first Schedule means a Court which the President has under article 123 declared to be a High Court for the purposes of articles 103 and 106 of this constitution.'"

Sir, I move :

"That with reference to amendment No. 2622 of the List of amendments, Explanation II to clause (2) of article 193 be omitted."

The object of all these amendments 196 to 200 is to remove all distinctions between British India and the Indian States. Some of the amendments particularly amendments 199 and 200 are merely consequential upon the main amendment.

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***Mr. President :** Dr. Ambedkar, do you wish to speak on this ?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think that any reply is called for.

[Only 4 amendments were adopted. Rest were rejected. Article 193, as amended, was added to the Constitution.]

ARTICLE 193-A

†Mr. President : Dr. Ambedkar, do you wish to say anything about Prof. Shah's motion ?

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I regret that I cannot accept this amendment by Prof. Shah. Ill understood Prof. Shah correctly, he said that the underlying object of his amendment was to secure or rather give effect to the theory of separation between the judiciary and the executive. I do not think there is any dispute that there should be separation between the Executive and the Judiciary and in fact all the articles relating to the High Court as well as the Supreme

*CAD, Vol. VIII, 7th June 1949, p. 674.

†*Ibid.,* pp. 678-79.

Court have prominently kept that object in mind. But the question that arises is this : how is this going to bring about a separation of the judiciary and the executive. So far as I understand the doctrine of the separation of the judiciary from the executive, it means that while a person is holding a judicial office he must not old any post which involves executive power ; similarly, while a person is holding an executive office he must not simultaneously hold a judicial office. But this amendment deals with quite a different proposition so far as I am able to see it. It lays down what office a person who has been a member of the judiciary shall hold after he has put in a certain number of years in the service of the judiciary. That raises quite a different problem in my judgment. It raises the same problem which we might consider in regard to the Public Service Commission, as to whether a Member of the Public Service Commission after having served his term of office should be entitled to any office thereafter or not. It seems to me that the position of the members of the judiciary stands on a different looting from that of the Members of the Public Service Commission. The Members of the Public Service Commission are, as I said on an earlier occasion, intimately connected with the executive with regard to appointments to Administrative Services. The judiciary to a very large extent is not concerned with the executive : it is concerned with the adjudication of the rights of the people *and* to some extent of the rights of the Government of India and the Units as such. To a large extent it would be concerned in my judgment with the rights of the people themselves in which the government of the day can hardly have any interests at all. Consequently the opportunity for the executive lo influence the judiciary is very small and it seems to me that purely for a theoretical reason to disqualify people from holding other offices is to carry the thing too far. We must remember that the provisions that we are making for our judiciary are not, from the point of view of the persons holding the office, of a very satisfactory character. We are asking them to quit office at sixty while in England a person now can hold office up to seventy years. It must also be remembered that in the United Stales practically an office in the Supreme Court is a life tenure, so that the question of a person seeking another office after retirement can very seldom arise either in the United States or in Great Britain.

Similarly, in the United States, so far as pension is concerned, the pension of a Supreme Court Judge is the same as his salary : there is

no distinction whatsoever between the two. In England also pension, so far as I understand, is something like seventy or eighty per cent. of the salary which the Judges get. Our rules, as I said, regarding retirement impose a burden upon a man inasmuch as they require him to retire at sixty. Our rules of pension are again so stringent that we provide practically a very meagre pension. Having regard to these circumstances I think the amendment proposed by Prof. K. T. Shah is both unnecessary for the purpose he has in mind, namely of securing separation of the judiciary from the executive, and also from the point of view that it places too many burdens on the members who accept a post in the judiciary.

Shri H. V. Kamath : May I say that this amendment applies not to retired Judges but to Judges serving on the bench at the moment ?

The Honourable Dr. B. R. Ambedkar : If I may say so, the amendment seems to be very confused. It says that it shall appply to a person who has served "for a period of live years continuously". That means if the President appointed a Judge for less than live years he would not be subject to this; which would defeat the very purpose that Prof. K. T. Shah has in mind. It would perfectly be open to the President in any particular case to appoint a Judge for a short period of less than five years and reward him by any post such as that of Ambassodor or Consul or Trade Commissioner, etc. The whole thing seems to me quite ill-conceived.

Mr. President : The question is :

"That the following new article 193-A after article 193 be added :

'193-A. No one who has been a Judge of the Supreme Court, or of the Federal Court or of any High Court for a period of 5 years continuously shall he appointed to any executive office under the Government of India or the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, Consul, as well as of a Minister in the Government of India or under the Government of any Stale in the Union'."

[This amendment of Prof. K. T. Shah was negatived.]

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ARTICLE 195

***The Honourable Dr. B. R. Ambedkar :** I move :

"That, in article 195 for the words 'a declaration' the words 'an affirmation or oath' be substituted."

It is a very formal amendment.

The amendment was adopted.

Article 195, as amended, was added to the Constitution.

*CAD, Vol. VIII, 7th June 1949, p. 680.

ARTICLE 196

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That for article 196, the following article be substituted :

Prohibition of practising in court or before any authority by a person who held office as a judgment a High Court.

'196. No person who was held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India'."

It is simply a rewording of the same.

Shri Prabhu Dayal Himatsingka : In view of the amendment moved by Dr. Ambedkar now, my amendment (No. 2632) is not necessary.

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†Mr. President: Dr. Ambedkar do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not think anything is necessary.

Mr. President : I will first put Sardar Hukam Singh's amendment to the vote. If that is accepted, Dr. Ambedkar's amendment will stand amended by this.

[The amendment was negatived. Dr. Ambedkar's amendment was adopted. Article 196, as amended, was added to the Constitution.]

ARTICLE 196-A

(Amendment No. 2639 was not moved)

Mr. President : A similar amendment, No. 1870 was moved and discussed at great length and it was held over.

The Honourable Dr. B. R. Ambedkar : I suggest that article 196-A may be held over. A similar article, (No. 103-A) was held over.

Mr. President: I agree. This article will then stand over.

ARTICLE 197

The Honourable Dr. B. R. Ambedkar : Article 197 also may be held over.

Mr. President: I agree, this article also is held over.

ARTICLE 198

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 198, the following article be substituted :—

Temporary appointment of acting Chief Justice.

"198. When the office of Chief Justice of a High court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his

*CAD, Vol. VIII, 7th June 1949, p. 680.

†*Ibid.,* p. 085.

‡*Ibid.,* p. G85.

office the duties of the office shall he performed by such one of the other judges of the court as the President may appoint for the purpose'."

Shri T. T. Krishnamachari : Sir, amendment No. 2650 is covered by the amendment moved by Dr. Ambedkar, because it relates to clause (2).

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ARTICLE 200

Dr. Ambedkar's amendment is substantially the same ; it deletes clause (2) and only retains clause (1).

Dr. P. K. Sen : I do not want to move that amenement.

(Amendments Nos. 2651, 2652 and 2653 were not moved.)

[The motion of Dr. Ambedkar was adopted. Article 198 as amended was added to the Constitution.]

***Mr. President :** There is amendment No. 201 of which notice has been given by Dr. Ambedkar which is exactly the same as the amendment moved by Mr. Jaspat Roy Kapoor. That amendment need not be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 200, the words 'subject to the provisions of this article 'be omitted."

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† The Honourable Dr. B. R. Ambedkar : Sir, I did not think that this article would give rise to such a prolonged debate, in view of the fact that a similar atrticle has been passed with regard to the Supreme Court. However, as the debate has taken place and certain Members have asked me certain definite questions, I am here to reply to them.

My Friend Mr. Kamath said that he did not know whether there was any precedent in any other country for article 200. I am sure he has not read the Draft Constitution, because the loot-note itself says that a similar provision exists in America and in Great Britain. (Inaudible interruption by Mr. Kamath) in fact, if I may say so; article 200 is word for word taken from section 8 of the Supreme Court of Judicature Act in England. There is no difference in language at all. That is my answer, so far as precedent is concerned.

But, Sir, apart from precedent, I think there is every ground for the provision of an article like article 200. As the House will recall we have now eliminated altogether any provision for the appointment of

*CAD, Vol. VIII, 7th June 1949, p. 688.

†*Ibid.,* pp. 693-95.

temporary or additional judges, and those clauses which referred to temporary or additional judges have been eliminated from Constitution. All judges of the High Court shall have to be permanent. It seems to me that if you are not going to have any temporary or additional judges you must make some kind of provision for the disposal of certain business, for which it may not be feasible to appoint a temporary judge in time to discharge the duties of a High Court Judge with respect to such matters. And therefore the only other provision which would be compatible with article 196 (which requires that no judge after retirement shall practise) is the provision which is contained in article 200. As my Friend Dr. Tek Chand said, there seems to be a lot of misgiving or misunderstanding with regard to the purpose or the intention of the article. It is certainly not the intention of the article to import by the back door for any length of time persons who have retired from the High Courts. Therefore nobody need have any misgiving with regard to this.

The other question that has been asked of me is with regard to the proviso. Many people who have spoken on the proviso have said that it appeared to them to be purposeless and meaningless. I do not agree with them. I do think that the proviso is absolutely necessary. If the proviso is not there it would be quite open for the authorities concerned to impose a sort of penalty upon a judge who refuses to accept the invitation. It may also happen that a person who refuses to accept the invitation may be held up for contempt of Court. We do not want such penalties to be created against a retired High Court Judge who either for the reason that he is ill, incapacitated or because he is otherwise engaged in his private business does not think it possible to accept the invitation extended to him by the Chief Justice. That is the justification for the proviso. The other question that has been asked is whether the word 'privilege' in article 200 will entitle a retired judge to demand the full salary which a judge of the High Court would be entitled to get. My reply to that is that this is a matter which will be governed by rules with regard to pension. The existing rule is that when a retired person is invited to accept any particular job under Government he gets the salary of the post *minus* the pension. I believe that is the general rule. I may be mistaken. Anyhow, that is a matter which is governed by the Pension Rules. Similarly this matter may be left to be governed by the rules regarding pension and we need not specifically say anything about it with regard to this matter in the article itself. This is all I have to say with regard to the points of criticism that have been raised in the course of the debate.

Shri H. V. Kamath : Is there such a provision in the Constitution of the United Slates ?

The Honourable Dr. B. R. Ambedkar : I have not got the text before me. In the United States the question does not arise because the salary and pension are more or less the same.

I am prepared to accept amendment No. 89 of Mr. Kapoor, because some people have the feeling that article 200 is likely to be abused by the Chief Justice inviting more than once a friend of his who is a retired judge. I therefore am prepared to accept the proposal of Mr. Kapoor that the invitation should be extended only after the concurrence of the President has been asked for.

Shri Jaspat Roy Kapoor: May I know whether it is the intention that the interpretation of the term 'privileges' should be left to the Parliament ?

The Honourable Dr. B. R. Ambedkar : It may have to be defined. There is no doubt about it that Parliament will have to pass what may be called a Judiciary Act governing both the Supreme Court and the High Courts and in that the word 'privilege' may be determined and defined.

Shri Jaspat Roy Kapoor : But the privileges will be the same in the case of a judge who has been called back and that of the permanent judges. That is what article 200 lays down.

The Honourable Dr. B. R. Ambedkar : Yes, but privilege does not mean full salary.

Mr. President : Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by Dr. Ambedkar. I will now put it to vote.

> "That in article 200 after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The amendment was adopted.

[Dr. Ambedkar's original amendment was also adopted and article 200 as amended, was added to the Constitution.]

ARTICLE 202

***Dr. Bakshi Tek Chand :** ...I hope the amendment which I have moved will be accepted by Dr. Ambedkar and that the article, as amended, will be passed by the House.

Mr. President: Dr. Ambedkar, do you wish to move amendment No. 2663 ?

The Honourable Dr. B. R. Ambedkar : No. Sir, I accept bakshi Tek Chand's amendment. I do not think that any reply is necessary.

*CAD, Vol. VIII, 7th June 1949, p. 697.

Shri H. V. Kamath : There has been an amendment to substitute "or" for "and".

The Honourable Dr. B. R. Ambedkar : There is no difference as to the substance of the article.

Shri H. V. Kamath : It makes a difference as to the meaning.

(Amendment by Dr. Bakshi Tek Chand.)

"That with reference to amendment No. 2661 of the list of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

The amendment was adopted.

[Article 202, as amended, was added to the Constitution.]

ARTICLE 203

***The Honourable Dr. B. R. Ambedkar :** Sir, I wish that article 203 be held over.

Mr. President: Article 203 is held over.

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ARTICLE 204

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That the explanation to article 204 be omitted."

Sir, it is unnecessary.

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‡**Mr. Tajmal Hussain :** ...The amendment moved by Dr. Ambedkar is perfectly correct. I support that amendment.

Mr. President: I want to dispose of this article before we rise. It is already twelve.

The Honourable Dr. B. R. Ambedkar : I am afraid I have to go to a Cabinet Meeting at 12 o'clock.

Mr. President: Then I do not think "there is much to be said either against or for the amendment. All that could be said has been said. No more speeches.

The Honourable Dr. B. R. Ambedkar : With regard to the observations made by my Friend Mr. Bharathi.

Shri H. V. Kamath : Sir, you have called upon me to speak. I shall not take more than 2 or 3 minutes. Shall I speak now or tomorrow ?

Mr. President: Tomorrow.

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#**Mr. President:** We shall now take up the discussion of article 204.

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*CAD, Vol. VIII, 7th June 1949, p. 698.

†*Ibid*., p. 699.

‡*Ibid.,* 701.

#*Ibid,* 8th June 1949, pp. 703-04.

The Honourable Dr. B. R. Ambedkar (Bombay : General) Sir, I would like to move an amendment to article 204, I mentioned that I would have to consider the position; I have since considered it and I would like to move the amendment. Sir, with your permission I move :

"That with reference to amendment No. 2674 of the List of Amendments, for article 204 the following article be substituted :

Transfer of certain cases to High Court.

'204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment'."

That is the amendment. If you like, Sir, I will speak something about it now. But I would rather reserve my remarks to the end to save time instead of speaking twice.

Mr. President : Just as you please.

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***The Honourble Dr. B. R. Ambedkar :** Sir, I do not think any very long discussion is necessary to come to a decision on the amendment I have moved. The House will remember when we were dealing yesterday with article 204 my Friend Mr. Bharathi raised a question which related to the last sentence in article 204, *viz.*, that the High Court shall withdraw the case to itself and dispose of the same. The question which Mr. Bharathi put, which I thought was a very relevant one, was this. Why should the High Court be required to withdraw the whole case and dispose of it, when all that the main part of article 204 required was that it should deal with a substantial question of law as to the interpretation of the Constitution ? His position was that in a suit many questions might be involved. One of them might be a question involving a substantial question of law as to the interpretation of this Constitution. The other questions may be questions as to the interpretation of ordinary law made by Parliament. If there was a case of this sort which was a mixed case, containing an issue relating to the interpretation of the Constitution and other issues relating to the interpretation of the ordinary law while it may be right for the High Court to possess the power to decide and pronounce upon the question relating to the interpretation of law, why should the High Court be required to withdraw the whole case and decide not merely upon the issue relating

*CAD, Vol. VIII, 8th June 1949, pp. 716-19.

to the interpretation of the Constitution but also upon other issues relating to the interpretation of ordinary law ? As I said, that was a very pertinent question the force of which I did feel when I heard his argument and I therefore asked your permission to allow this article to be kept back.

Now, if I may say so, a similar question was raised by my Friend Shri Alladi Krishnaswami Ayyar when we were dealing with article 121. which also dealt with appeals to the Supreme Court in cases which were of a mixed type, namely, cases where there was a question of constitutional law along with questions of the interpretation of ordinary law made by Parliament. According to the original draft it was provided that in all cases where there was an issue relating to the interpretation of the constitutional law, such an appeal should be decided by a Bench of five Judges. The question that was raised by Shri Alladi Krishnaswami Ayyar was that a party may, quite wickedly so to say—for the purpose of getting the benefit of a bench of five—raise in his grounds of appeal a question relating to the interpretation of constitutional law which ultimately might be found to be a bogus one having no substance in it. Why should five Judges of the Supreme Court waste their time in dealing with an appeal where as a matter of fact there was no question of the interpretation of constitutional law ? The House will remember that his argument was accepted and accordingly, if the House has got papers containing the Fourth Week's Amendment List No. 1, Amendment 43, they will find that we then introduced a proviso which said that in a case of this sort where an appeal comes from a High Court involving not necessarily the question of the interpretation of law but involving other questions, the appeal should go to an ordinary bench constituted under the rules made by the Supreme Court which may, I do not know, be a Bench of either two Judges or three Judges. If after hearing the appeal that particular Bench certifies that there is as a matter of fact a substantial question of the interpretation of the Constitution, then and then alone the appeal-may be referred to a bench of five Judges. Even then the Bench of the five Judges to which such an appeal would be referred would decide only the constitutional issue and not the other issues. After deciding constitutional issues the Judges would direct that the case be sent back to the original bench of the Supreme Court consisting either of two or three Judges to dispose of the same.

My first submission is this, that in making tills amendment to article 204 which I have mewed this morning we are doing no more than carrying out the substance of the proviso to clause (2a) of article 121 contained in amendment No. 42. Here also what we say is this : that the High Court, if satisfied, may take the case to itself, decide the issue on constitutional law and send back the case to the subordinate Judge for the disposal of other issues involving the interpretation of ordinary law made by Parliament. I do not think we are making anything new, novel, strange or extraordinary as compared to what we have done with regard to the Supreme Court. Therefore my submission is this that if we accept, as we have accepted, the proviso to clause (2a) of article 121, the House cannot be making any very grave mistake or any very grave departure.....

Shri Alladi Krishnaswami Ayyar : On a point of explanation, Sir, I shall feel obliged if it is your view that there is no distinction between a point arising in the appellate stage and a point arising when the case is pending in the court of first instance.

The Honourable Dr. B. R. Ambedkar : I am only dealing with the general framework of the amendment. My submission is that the amendment I have moved is exactly on a par with the proviso that we have added to clause (2a) of article 121. Therefore my submission is that there is no very grave departure from what we have already done.

Then two questions have been raised. One is with regard to the use of the word 'judgment' It has been said that the word 'judgment' has been differently interpreted and that the party whose case has been withdrawn by the High Court for the purposes of determining the constitutional issue may not be in a position to approach the supreme Court, because under article 110 we have said that an appeal to the Supreme Court shall lie only from the judgment or the final order of the High Court. The contention is that the judgment may not be regarded as a judgment within the meaning of article 110 or may not be regarded as a final order. Well, having used the word 'judgment' in article 110 in that prticular sense, namely a decision from which an appeal would lie to the Supreme Court, I do not personally understood why the use of word 'judgment 'in this amendment should not be capable of the same interpretation. But if the contention is correct I think the matter could be easily rectified by using the word 'decision' instead of 'judgment' and adding an explanation such as this that "the decision shall be regarded as a final order for the purpose of article 110". I do not think that that difficulty is insuperable.

With regard to the question of appeal it would certainly he open to the party whose case has been withdrawn to do what it likes. Once the judgment has been delivered by the High Court, in a case which has been withdrawn for the purpose of decision of the issue regarding the interpretation of the Constitution, it may straightway go to the Supreme Court and have that question finally decided, or it may wait until all issues have been decided by the subordinate Judge, an appeal has gone through the High Court on findings of fact with regard to those particular issues and thereafter take the matter to the Supreme Court. We do not bind the party to any of the procedure if the issue regarding the interpretation of the Constitution is on the same footing as what we may call a preliminary issue so that when a decision is taken it will be a decision of the whole case. I have no doubt about it that the party affected will, rather than proceed with the rest of the case before the subordinate Judge, go immediately to the Supreme Court and have an interpretation of the Constitution. I see no difficulty at all in this.

Now, the other question that was raised was this : my Friend Shri Alladi Krishnaswami Ayyar said something silting there. I could not hear him. Bui in private conversation he mentioned that it may be very difficult for a High Court to make a severance between an issue relating to the interpretation of the Constitution and the other issues and it may be that for the interpretation of the other issues and for the interpretation of the issue relating to the interpretation of the Constitution the High Court may have to consider other issues as well. It was also suggested that supposing the case was really a small one, but did involve the question of interpretation of law, why should the High Court be not permitted to dispose of such a small case rather than have it sent back to the subordinate court ? Well, in order to meet both these contingencies, the amendment gives the power to the High Court to dispose of the case itself. I do not think that that would not be found sufficient for the difficulties which have been pointed out. I therefore submit that the amendment does carry out the intentions we have, namely, that the High Court should not be encumbered with a decision of all the issues when it considers the whole case; it may be left free to decide a particular issue with regard to the specific question of the interpretation of the Constitution.

May I say one more thing ? There is no doubt a power under the Civil Procedure Code contained in section 24 permitting the High Court to withdraw any case to itself and determine it. But the difficulty with section 24 is that if the High Court decides upon withdrawal it shall have to withdraw the whole case. It has no power of partial withdrawal,

while our object is that the High Court should be permitted to withdraw that part of the case which refers to the interpretation of the Constitution. My submission, therefore, *is* that unless you provide specifically as we are doing now under article 204, the High Court will have to withdraw the whole case to itself if it wants to decide the question of the interpretation of this Constitution.

I would like to say one thing more. You will remember that there was no time between yesterday and this morning to apply all that close attention to the wording of this particular amendment which I have moved. I am therefore moving this amendment because I think it is very wrong to keep on holding up article after article because of certain minor defects or discrepancies. I should like to say that while I move this amendment I would like to have an opportunity given to the Drafting Committee to make such changes as it may deem necessary in order to remove the defects that have been mentioned if there are any, and bring it into line with the other articles which the assembly has passed.

Mr. President: I will now put the amendment of Professor Shah No. 2674 to vote.

Mr. H. V. Kamath : I thought Dr. Ambedkar's amendment superseded this amendment.'

The Honourable Dr. B. R. Ambedkar : I am substituting the entire article. You may withdraw amendment No. 2674.

Mr. President: Your amendment is for substituting the whole article. I will then put your amendment to vote.

The question is :—

"Thai for article 204, the following article he substituted :—

Transfer of certain cases to High Courts.

'204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law return to case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.'"

The amendment was adopted.

Mr. President : Now this becomes the original article. It disposes of all the amendment moved. The question is :—

"That article 204, as amended, stand part of the Constitution."

The motion was adopted.

Article 204, as amended, was added to the Constitution.

[Dr. Ambedkar's amendment was carried. Article 204, as amended, was added to the Constitution.]

ARTICLE 205

***Mr. President:** The House will now consider article 205. There is an amendment to this by Dr. Ambedkar, No. 2676.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 205, the following be substituted ;—

Officers and servants and the expenses of High Courts,

'205. (1) Appointments of officers and servants of a High court shall he made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct:

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may he specified in the rule, no person not already attached to the Court shall he appointed to any office connected with the Court save after consultation with the State Public service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall he such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the salaries, allowance and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultation with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the Judges of the Court, shall he charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues.'"

Mr. President : There is an amendment by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar : Sir, I have an amendment to this amendment. If you will allow me I will move it. It is on page 3 of List II.

Mr. President: You can move it. —

The Honourable Dr. B. R. Ambedkar: Sir I move :

"That with reference to amendment No. 2676 of the List of Amendments, for the proviso to clause (2) of the proposed article 205, the following proviso be substituted.—

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat'."

Sir, these provisions are exactly the same as the provisions for the Supreme Court.

Mr. President : That covers your amendment, Mr. Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General) **:** Yes, Sir, it obviates the necessity for moving my amendment.

[Dr. Ambedkar's amendment was adopted. Article 205, as amended, was added to the Constitution.]

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*CAD, Vol. VIII, 8th June, pp. 710-20.

ARTICLE 206

***The Honourable Dr. B. R. Ambedkar :** Sir, I move that this article be deleted.

Article 206 was deleted from the Constitution.

ARTICLE 90—*Contd.*

The Honourable Dr. B. R. Ambedkar: Sir, I would request you now to take the financial article. We may go back to article 90 which was under discussion.

Mr. President: We had a number of amendments to tills article which were moved that day before we adjourned discussion. They are amendments Nos. 3, 4 and 6 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted :

'(c) the custody of the Consolidated Fund or the Contingency Fund of India, die payment of moneys into or the withdrawal of moneys from any such fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;'"

Sir, Amendment No. 4 is covered by amendment No. 3 and so I am not moving it. Sir, I also move :

"That in sub-clauses (e) and (f) of clause (l) of article 90, for the words 'revenues of India', the words 'Consolidated Fund of India' be substituted."

Sir, Amendment No. 5 standing in the name of Pandit Kunzru is also covered and therefore, it is necessary.

Sir, with your permission, I would like at this stage to make a short introductory speech in order to give the House an idea of some of the changes which are not covered by the specific amendments which I have moved just now, but which relate to the changes that have been made in the financial procedure to be observed with regard to financial matters.

The changes that we have made by the various amendments that I have proposed to move in connection with tills matter are these. The first change that has been made is that there shall be no taxation without law. If any levy is to be made upon the people, the sanction must be that of law. That is provided for in article 248 which will come at a later stage. In order to give the House a complete idea of what we are

*CAD, Vol. VIII, 8th June 1949, pp. 721-26.

doing, I mention the matter now. There was no such provision in the existing Draft Constitution. The second thing which is proposed to be done is to introduce the idea of what is called a Consolidated Fund. That will be done by the new article 248-A which will come at a later stage. We also wish to provide for the establishment of a Contingency Fund which Parliament may want to establish. That will be done by the new article 248-B.

I do not think that any explanation is necessary for the first provision, namely, that there should be no tax except by law. It is a very salutary provision and the executive should not have any power of levy upon the people unless they obtain the sanction of Parliament. With regard to the Consolidated Fund, it is really in a sense not a new idea at all; it is merely a new wording. The existing wording is "Public Account of the Governor General of India." If Honourable Members will refer to a volume called the Compilation of Treasury Rules, Volume I, they will find that the Public Account is also referred to as the Consolidated Fund. I shall read the definition. "Public Account of the Central Government means the Consolidated Fund into which moneys, received on account of the revenues of the Governor-General as defined in section 136 of the Act are paid and credited and from which all disbursements by or on behalf of Government are made."

Therefore, the use of the word "Consolidated Fund" is merely a change in nomenclature because that word is already used as an equivalent of the Public Account of the Central Government.

There is also an important idea behind this notion of a Consolidated Fund. Tills notion of a Consolidated Fund, as Members might know, arose in England some time about 1777. The object why the Consolidated Fund was created in England was tills. Originally Parliament voted taxes to the King, leaving the King to collect and spend it on such purposes as he liked. Oftentimes, the King spent the money for purposes quite different from the purposes for which he had asked it. Parliament could have no control after having voted the taxes. At a later stage. Parliament followed another procedure, namely, to levy a tax and to appropriate the proceeds of that tax for a certain purpose, with the result that when they came to passing the budget, there was practically no money left, all the taxes having been appropriated to specific purposes. Nothing was left for the general purposes of the

budget. In order to avoid his squandering of money, so to say, by appropriation of individual taxes for particular purposes, it was necessary to see that all revenues raised by taxes or received in other ways were, without being appropriated to any particular purpose, collected together into the one fund so that Parliament when it conies to decide upon the Budget has with it a fund which it could disburse. In other words, a Consolidated Fund is a necessary tiling in order to prevent the proceeds of taxes being frittered away by laws made by Parliament in individual purposes without regard to the general necessity of the people at all. I therefore submit that the House will have no difficulty in accepting the provision for a Consolidated Fund because it is a very necessary thing. If I may say so, there is no Constitution which does not provide for a Consolidated Fund. If you compare the constitution of Australia, Canada, South Africa or Ireland, or any Constitution, you will find that they all have a provision which says that all funds raised by taxes or otherwise shall be pooled together in a Consolidated Fund. We are therefore not making any departure at all.

Then, the other provision which we seek to make is to provide for an Appropriation Act in the place of a certified Schedule by the President. Honourable Members, if they refer to article 94 of the Draft Constitution, will see what the present procedure is. First of all, what happens is this : the President, that is to say, the Government of the day is required by article 92 to present a Financial Statement to Parliament in a certain form, which form is laid down in sub-clause (2) of article 94, dividing the expenditure into two categories, one category containing the expenditure charged upon the revenues of India and the other category of expenditure not charged upon the revenues of India, that is to say, upon the Consolidated Fund. After that is presented, then comes the next stage which is provided for in article 93. Under article 93 what happens is this : Parliament proceeds to discuss the Financial Statement submitted to it, head by head, sub-head by sub-head, item by item and either agrees with the provisions made as to the amount by the executive or reduces it. This thing is done by resolutions passed by the House on any cut motion. After that is done, under the present procedure, the provisions of article 94 apply, namely, that the President then certifies what the Assembly has done in the

matter of making provision for the various heads of expenditure placed before it by Parliament. The new provision is that the procedure regarding certification by the President should be replaced by a proper Appropriation Act, passed by the legislature.

The argument in favour of substituting the procedure for an Appropriation Bill for the provisions contained in article 94 of the Draft Constitution is this. The legislature votes the supplies. It is, therefore, proper that the legislature should pass what it has done in the form of an Act. Why should the work done by the legislature in the matter of voting supplies be left to the President to be certified by an executive act, so to say ? That is the principal point that we have to consider. In the matter of Finance, Parliament is supreme, because, no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head, then the proper authority to certify what it has done with regard to expenditure on any particular head is the Parliament and not the President. Therefore, the procedure of an Appropriation Act is substituted for the procedure contained in article 94 of this Draft Constitution.

I may also mention that article 94 was appropriate under the Government of India Act of 1935 for the simple reason that the Governor-General had a right to certify what expenditure was necessary for him for discharging his functions which were in his discretion and in his individual judgment. The expenditure which the Governor-General wanted to incur in respect of functions which were in his discretion and in his judgment were outside the purview and outside the power of Parliament. He was entitled to change the amount, to alter that, to add to them. It was consequently necessary that the Governor-General should be the ultimate authority for certification because he had independent power of making such budget provision as he wanted to make in order to discharge his special functions. Under our new Constitution the President has no functions at all either in his discretion or in his individual judgment. He has therefore no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all Parliamentary Governments in

Canada, Australia, South Africa and in Great Britain. I might also mention that, when this matter was discussed in 1935 when the Government of India Act was on the anvil, the proposal was made by the Secretary of State himself that the authentication of the expenditure sanctioned by the Assembly would be done by an Appropriation Act and not by certification, but the Government of India of the day did not like the idea of an Appropriation Bill for the reason that the Governor-General had power to fix certain amounts in the budget in order to provide for the discharge of his own functions. Otherwise the Secretary of State himself, as I said, was in favour of this proposal but his proposal was turned down by the Government of India in 1935. But my submission is this, that there is no necessity now for retaining this function which really gives the executive the authority to fix the amount and also to spend the money. I think it would be desirable to bring our procedure in line with the procedure that is prevailing in all countries where Parliament is supreme in the matter of sanctioning money for expenditure.

The other provision which is new which we have inserted is what is called vote on account. Now, it is necessary perhaps to explain why we have introduced it. For that purpose I should again like the House to refer to article 93 as it stands. Under article 93 no money can be issued or spent for any services unless the whole of the detailed budget is passed by Parliament. If you read article 93, that is the effect of it. The budget has to be presented under heads, sub-heads and items. Parliament has to pass that budget with regard to head, sub-heads and items. That is what is called passing the budget. Now, as you all know the budget is an enormous thing involving expenditure of something like 250 crores distributed on various items. If the provision of article 93 is to remain intact *viz.,* no money is to be spent unless all the details are passed by Parliament and if you also have the provision that the budget must be passed before the end of the official year is over, then you must have a very limited time fixed for the discussion of the budget because under the provisions of article 93 you cannot spend any money unless the budget had been passed in alt its details. Either, as I said, you give up your right to discuss the budget in full or you make a change in article 93, or you may make another provision making an exception to article 93. The vote on account procedure which we propose to

introduce by an amendment provides for Parliament allowing a lump sum grant to the executive to be spent upon the services of the year for say about two months or so, so that the two months time will be available to Parliament to discuss in a much greater length—I don't say fully—the budget provisions and the financial provisions of the Government. Unless, therefore, you have a provision for a vote on account *i.e.,* lump sum grant given to executive to cover an expenditure for about two or three months, that may be decided by some agreement between the Government and the Leader of the Opposition—unless you make a provision for a vote on account you will not get time to discuss the budget at any greater length than what you have now. The House will remember that last time there was a great deal of feeling in the House that the Budget was rushed through, people had not more than seven or eight days given to them for the discussion of the different items and that the guillotine was applied. If the House therefore desires that it should have more time to discuss the details of the budget, to discuss the details of the financial provision, then some provision has got to be made in the Constitution whereby it will be open to the House to allow the executive to have a lump sum out of the Consolidated Fund, covering an expenditure of two months if the House wants two months for discussion. Since the provisions of article 93 are very stringent in the sense that no money can be spent unless the whole of the budget in all its details is passed we have got to make an exception to the provisions contained in article 93. Those exceptions are made by a provision which is called 'Provision for Votes on account'. These are, if I may say so, the three main changes that we have made in the Draft Constitution, Sir, with these words I move the amendments I have tabled.

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***Shri B. Das :** ...I again feel happy that these articles, as now going to be amended, will be fool-proof and the Ministers will not play truant and will not be extravagant in expenditure. I again congratulate Dr. Ambedkar over it.

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General)**:** Sir, before I speak, I would like to ask Dr. Ambedkar some clarification of certain points. Does this amendment force the Government of India

*CAD, Vol. VIII, 8th June 1948, p. 737.

to have a fund which is to be called a Consolidated Fund ? Or is it an enabling amendment ?

The Honourable Dr. B. R. Ambedkar : It is already there. It is only a change of name.

The Honourable Rev. J. J. M. Nichols-Roy : Then there must be an Appropriation Act passed in a Legislature and that must be passed in the same session ?

The Honourable Dr. B. R. Ambedkar: Yes.

The Honourable Rev. J. J. M. Nichols-Roy : That will take time no doubt. Sir, in view of this I would make a few remarks. There has been a good deal of criticism regarding the expenditure of money and waste of money by the Ministers of the Government of India or it might be by the Governments of the Provinces. I suppose the principles in this article 90 will apply to the provincial Governments also—the same principles are in article 174.

The Honourable Dr. B. R. Ambedkar : Yes.

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***The Honourable Rev. J. J. M. Nichols-Roy :** ...I want to ask Dr. Ambedkar whether that is the position or whether every province will be forced to pass an Appropriation Act in order to appropriate money for expenditure.

The Honourable Dr. B. R. Ambedkar : The Appropriation Act will be compulsory, but the Vote on Account is optional for each Ministry. If any Ministry wants money on Vote on Account, it may ask the Legislature.

The Honourable Rev. J. J. M. Nichols-Roy : Suppose the Ministry in Assam or in any Province wants to follow the same procedure that we are having now, with the certificate of the Governor, will it be open to **it** to do so ?

The Honourable Dr. B. R. Ambedkar : There is no certificate at all of the Governor now.

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† **The Honourable Dr. B. R. Ambedkar :** I do not think I can add anything usefully to what Mr. T. T. Krishnamachari has said. I should reserve my observations for the various amendments which will come up as I have no doubt the same arguments will be put forth.

[Amendments by Dr. Ambedkar mentioned earlier were adopted, others were rejected. Article 90, as amended, was added to the Constitution.]

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*CAD, Vol. VIII, 8th June 1948, p. 738.

† *Ibid.,* p. 741.

HINDI NUMERALS ON CAR NUMBER PLATES

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***Pandit Balkrishna Sharma :** ...My submision to him has always been that Delhi as a Province is surrounded on all sides by Provinces which have declared Hindi as their Government language and Devanagari as the Government script.

Mr. President: Order, order. I have got the information which you wanted to give me. As I said, Honourable Members will not insist upon my giving a ruling on the question of privilege. It may not be in their interest. As I have said, the matter will be taken up with the Government.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** There is no privilege to break the law.

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ARTICLE 92

The Honourable Dr. B. R. Ambedkar : Sir, I move :

1. "That in sub-clause (b) of clause (3) of article 92, for the words 'emoluments' the words 'salaries' be substituted."

That is the usual wording we are using.

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†The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

2. "That in sub-clauses (a) and (b) of clause (2) of article 92. for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

3. "That in clause (3) of article 92, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

4. "That after sub-clause (d) of clause (3) of article 92, the following sub-clause be inserted :—

(dd) the salary, allowances and pension payable to or in respect of the Comptroller 'and Auditor-General of India'."

With regard to 9, all I, need say is that the House has already passed article 124, clause (5) which contains the present amendment. It is therefore here, because, it was felt that all items which are declared to be charges on the Consolidated Fund of India had better be brought in together, rather than be scattered in different parts of the Constitution.

[All four amendments of Dr. Ambedkar as shown above were accepted others were rejected. Article 92 as amended was added to the constitution.]

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ARTICLE 93

‡The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in clause (1) of article 93, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

[Amendment was carried. Article 93, as amended, was added to the constitution.]

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*CAD, Vol. VIII, 10th June 1949, pp. 746-48.

†*Ibid.,* p. 750.

‡*Ibid.,* p. 754.

ARTICLE 94

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"Thai for article 94, the following article be substituted :—

Appropriation Bills

'94. (1) As soon as may be after the grunts under the last preceding article have been made by the House of the People there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India all moneys required to meet—

(a) the grants so made by the House of the People: and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated fund of India except under appropriation made by law passed in accordance with the provisions of this article.'"

As I explained yesterday the object of this new article 94 is to replace the provisions contained in the old article relating to the certification of a schedule by the Governor-General.

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†The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I thought that the observations made by my Friend Mr. T. T. Krishnamachari would have been regarded as sufficient to meet the objections raised by my Friend Mr. Santhanam, but since my Friend Mr. Bharathi by his speech has indicated that at any rate his doubts have not been cleared, I find it necessary to rise and to make a few observations. My Friend Mr. Santhanam said that we were unnecessarily borrowing the procedure of an Appropriation Bill and that the existing procedure of an authenticated schedule should have been sufficient for our purposes. His argument if I understood him correctly was this : that an Appropriation Bill is necessary in the House of Commons because the supply estimates are dealt with by a Committee of the whole House and not by the House itself. Consequently the Appropriation Bill is, in his opinion, a necessary concomitant of a procedure of estimates being dealt with by sort of Committee of the House. Personally, I think there is no connection between the Committee procedure of the House of Commons and the necessity of an Appropriation Bill. I might tell the

*CAD, Vol. VIII, 10th June 1949, pp. 754-55.

†*Ibid., pp.* 762-64.

House as to how this procedure of the House of Commons going into a Committee of Supply to deal with the estimates came into being. The House will remember that there was a time in English political history when the King and the House of Commons were at loggerheads. There was not such pleasant feeling of trust and confidence which exists now today between the House of Commons and the King. The King was regarded as a tyrant, as an oppressor, as a person interested in levying taxes and spending them in the way in which he wanted. It was also regarded that the Speaker of the House of Commons instead of being a person chosen by the House of Commons enjoying the confidence of the House of Commons was regarded as a spy of the King. Consequently, the members of the House of Commons always feared that if the whole House discussed the estimates, the Speaker who had a right to preside when the House as a whole met in session would in all probability, to secure the favour of the King, report the names of the members of the House to the King who criticised the King's conduct, his wastefulness, his acts of tyranny. In order therefore to get rid of the Speaker who was, as I said in the biginning, regarded as a spy of the King carrying tales of what happened in the House of Commons to the King, they devised this procedure of going into a Committee; because when the House met in Committee the Speaker has no right to preside. That was the main object why the House of Commons met in Committee of Supply. As I said, even if the House did not meet in Committee of Supply, it would have been necessary for the House to pass an Appropriation Bill. As my Friend—at least the lawyer friends—will remember, there was a time when the House of Commons merely passed resolutions in Committee of Ways and Means to determine the taxes that may be levied, and consequently the taxes were levied for a long time—I think up to 1913 on the basis of mere resolutions passed by the House of Commons Committee of Ways and Means. In 1913 this question was taken to a Court of law whether taxes could be levied merely on the basis of resolutions passed by the House of Commons in the Committee of Ways and Means, and the High Court declared that the House of commons had no right to levy taxes on the basis of mere resolutions. Parliament must pass a law in order to enable Parliament to levy taxes. Consequently, the British Parliament passed what is called a Provincial Collection of taxes Act.

I have no doubt about it that if the expenditure was voted in Committee of .Supply and the resolutions of the House of Commons were to be treated as final authority, they would have also been condemned by Courts of law, because it is an established proposition that what operates is law and not resolution. Therefore my first submission is this : that the point made by my Friend Mr. Santhanam, that the Appropriation Bill procedure is somehow an integral part of the Committee procedure of the House of Commons has no foundation whatsoever. I have already submitted why the procedure of an authenticated schedule by the Governor-General is both uncalled for, having regard to the altered provision of the President who has no function in his discretion or in his individual judgment, and how in matters of finance the authority of Parliament should be supreme, and not the authority of the executive as represented by the President. I therfore need say nothing more on this point.

Then my Friend, Mr. Santhanam, said, if I understood him correctly, that article 95—I do not know whether he referred to article 96; but he certainly referred to article 95—would nullify clause (3) of the new article 94. Clause (3) stated that no money could be spent except under an appropriation made by law. He seemed to be under the impression that supplementary, additional or excess grants which are mentioned in new article 95, and votes on account, or votes on credit or exceptional grants mentioned in the new article 96 would be voted without an Appropriation law. I think he has not completely read the article. If he were to read sub-clause (2) of the new article 95 as well as the last para of new article 96 and also a further article which will be moved at a later stage—winch is article 248A—he will see that there is a provision made that the moneys can be drawn, whether for supplementary or additional grants or for votes on account or for any purpose, without a provision made by law for drawing moneys on Consolidated Fund. I can quite understand the confusion which probably has arisen in the minds of many Members by reason of the fact that in some place we speak of a Consolidated Fund Act while in another place we speak of an Appropriation Act. The point is this : fundamentally, there is no difference between a Consolidated Fund Act and an Appropriation Act. Both have the same purpose, namely, the purpose of authorising an authority duly constituted to draw moneys from the Consolidated Fund.

The difference between a Consolidated Fund Act and the Appropriation Act is just this. In the Consolidated Fund Act a lump sum is mentioned while in the Appropriation Act what is mentioned is all the details—the main head, the sub-heads and the items. Obviously, the procedure of an Appropriation Bill cannot be brought into operation at the stage of a Consolidated Fund Bill because Parliament has not gone through the whole process of appropriating money for heads, for sub-heads and for items included under the sub-heads. Consequently when money is voted under a Consolidated Fund Act, it means that the executive may draw so much lump sum out of the Consolidated Fund which will at a subsequent stage be shown in what is called the final Appropriation Act. If Honourable Friends will remember that there is no authority given to the executive to draw money except under a Consolidated Fund Act or under an Appropriation Act, they will realize that so far as possible an attempt is made to make these provisions as fool-proof and knave-proof as one can possibly do.

[Dr. Ambedkar's motion was adopted. Article 94, as amended was added to Constitution.]

ARTICLE 95

***The Honourable Dr. B. R. Ambedkar:** Sir, I move:

"That for article 95, the following article be substituted :

Supplementary, additonal or excess grants.

'95 (1) The President shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in express of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause, to be presented to the House of the People a demand for such excess, as the case may be.

(2) the provision of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein; or to a demand for a grant and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.'"

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*CAD, Vol. VIII, 10th June 1949, p. 765.

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I find that the financial provisions which are placed before this House have given considerable worry to the Members. I can appreciate that, for I remember that when Mr. Churchill's father became the Lord Chancellor, a budget was placed before him showing figures in decimals and dots thereon. Evidently he was not a student of mathematics and could not understand what the figures meant with a dot in it. So he wrote on the file, "what do these damned dots mean ?", asking for an explanation from the Secretary of the Finance Department. Having regard to such difficulty of understanding from persons so highly placed as Mr. Churchill's father, I am not at all surprised if the members of this House also find similar difficulty in understanding these provisions. I should therefore like to go somewhat into elementary propositions in order to place the House in a right frame of mind.

Sir, I should like to tell the House the effect of the provisions contained in article 92, article 93(2) and article 94. Article 92 places upon the President the obligation to lay before Parliament a financial statement for the year—I would like to emphasise the words "for the year"—showing the expenditure in certain categories, those charged on the revenues of India and those not charged on the revenues of India. After that is done, then comes into operation article 93(2), which states how the estimates are to be dealt with. It says that the estimates shall be presented to the House in the form of demands and shall be voted upon by the House of the People. After that work is done, article 94 comes into operation, the new article 94 which says that all these grants made by the House of the People shall be put and regularised in the form of an Appropriation Act No. I would like to ask the Members to consider what the effect is of articles 92, 93 (2) and 94. Suppose we did not enact any other article, what would be the effect ? The effect of the provisions contained in articles 92, 93(2) and 94 in my judgment would be that the President would not be in a position constitutionally to present before Parliament any other estimates during the course of the year. Those are the only estimates which the President could present according to law. That would mean that there would be no provision for, submitting supplementary grants, supplementary demands, excess grants on the other grants which have been referred to such as votes

*CAD; Vol. VIII, 10th June 1949. pp. 768-70.

on credit and things of that sort. If no provision was made for the presentation of supplementary grants and the other grants to which I have referred, the whole business of the executive would be held up. Therefore, while enacting the general provision that the president shall be bound to present the estimates of expenditure for the particular year before Parliament, he is also authorised by law to submit other estimates if the necessity for those estimates arises. Unless therefore we make an express provision in the Constitution for the presentation of supplementary and excess grants, articles 92, 93(2) and 94 would debar any such presentation. The House will now understand why it is necessary to make that provision for the presentation of these supplementary demands.

The question has been raised as to excess grants. The difficulty, I think, is natural. Members have said that when it is stated that no moneys can be spent by the executive beyond the limits fixed by the Appropriation Act, how is it that a case in excess grants can arise ? That, I think, is the point. The reply to that is this. We are making provisions in the terms of an amendment moved by my Friend Pandit Kunzru, which is new article 248-B on page 27 of List I, where there is a provision for the establishment of a Contingency Fund out of the Consolidated Fund of India. Personally myself, I do not think that such a provision is necessary because this question had arisen in Australia, in litigation between the state of New South Wales and the Commonwealth of Australia and the question there was whether the Commonwealth was entitled to establish a Contingency Fund when the law stated that all the revenues should be collected together into a Consolidated Fund, and the answer given by the Australia-Commonwealth High Court was that the establishment of a Consolidated Fund would not prevent the legislature of the Parliament from establishing out of the Consolidated Fund any other fund, although that particular fund may not be spent during that year because it is merely an appropriation although in a different from. However to leave no doubt on this point that it would be open to Parliament notwithstanding the provision of a Consolidated Fund to create a Contingency Fund. I am going to accept the amendment of my Friend, Pandit Kunzru for the incorporation of a new article 248-B. It is, therefore, possible that appart from the Fund that is issued on the basis of an Appropriation Act to the executive, the executive would still be in possession of the Consolidated Fund and such other fund as may be created by law from

time to time. It would be perfectly possible for the executive without actually having any intention to break the Appropriation Act to incur expenditure in excess of what is voted by Parliament and draw upon the Contingency Fund or the other fund. Therefore a breach of the Act has been committed and it is possible to commit such an act because the executive in an emergency thinks it ought to be done and there is provision of fund for them to do so. The question, therefore, is this : when an act like this is done, are you not going to make a provision for the regularisation of that act ? In fact, if I may say so, the passing of an excess grant is nothing else but an Indemnity Act passed by Parliament to exonerate certain officers of government who have in good faith done something which is contrary to the law for the time being. There is nothing else in the idea of an excess grant and I would like to read to the Members of the House paragraph 230 from the House of Commons—Manual of Procedure for the public business. This is what paragraph 230 says :—

> "An excess grant is needed when a department has by means of advances from the Civil Contingencies Fund or the Treasury Chest Fund or cut of funds derived from extra receipts or otherwise spent the money on any service during any financial year in excess of the amount granted for that service and for that year."

Therefore, there is nothing very strange about it. The only tiling is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is a necessity, unless you go to the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant.

The Honourable Shri K. Santhanam : May I ask if under the provisions of the law as stated in the new article 95(2) the three preceding articles will have effect ? Does it mean that every supplementary demand should be followed by a supplementary Appropriation Act.

The Honourable Dr. B. R. Ambedkar : Yes; that would be the intention.

The Honourable Shri K. Santhanam : The appropriation will not be for the whole year ?

The Honourable Dr. B. R. Ambedkar : There may be supplementary appropriation. That always happens in the House of Commons.

Prof. Shibban Lal Saksena : What about my amendment. Sir ?

The Honourable Dr. B. R. Ambdkar : I am very sorry. Prof. Shibban Lal Saksena says that the financial year should be changed. Well, I have nothing to say except that I suspect that his motives are not very pure. He perhaps wants a winter session so that he can spin as long as he wants. If he wants longer sessions, he must sit during summer months as we are now doing.

[Dr. Ambedkar's amendment was accepted. Article 95, as amended, as mentioned earlier was added to the Constitution.]

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ARTICLE 96

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for article 96, the following article be substituted:—

Votes on account, votes on credit and exceptional grants.

'96. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the House of the People shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be staled with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year;

and to authorise by law the withdrawal of moneys from the consolidated Fund of India for the purpose for which the said grants are made.

(2) The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.'"

The Honourable Shri K. Santhanam : Sir, I do not want to reopen the general principle which has been accepted; hut I wish to say that the drafting of this article is rather defective.

For instance, in clause (1) it says, "the House of the People shall have power" and this is followed by, after sub-clause (c), "and to authorise by law……." I think according to the Constitution, the House of the People cannot authorise by law.

The Honourable Dr. B. R. Ambedkar : I should say, Sir, that the Drafting Committee reserves to itself the liberty to re-draft the last three lines following sub-clause (c).

*CAD, Vol. VIII, 10th June 1949, pp. 711-713.

The Honourable Shri K. Santhanam : Sir, I am unable to understand this. In the House here we pass something which is obviously wrong and unconstitutional and then leave it to the Drafting Committee. I do not think we can leave it to the Drafting Committee to tamper with the provisions we are making unless there is some lacuna or a mistake. We do not want to be faced with a new Constitutional together and subjected to the trouble of looking at it article by article again. I do not think it is right for this House to pass a clause which is obviously wrong. Either he must say Parliament shall have power……

The Honourable Dr. B. R. Ambedkar : I am prepared to accept the amendment right now. You may suggest it. "Parliament shall have power to authorise by law.

The Honourable Shri K. Santhanam : Sir, the amendment may be, "and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for winch the said grants are made."

Coming to clause (2), it says "that the provisions of articles 93 and94 of this Constitution shall have effect in relation to the making of any grant...;" I want to know if this means that there will have to bean Appropriation Act for this and that Appropriation Act will also show all the divisions, charged and non-charged, votable and non-votable, as stated in the previous article. If that is the implication…….

The Honourable Dr. B. R. Ambedkar : That cannot be.

The Honourable shri K. Santhanam : Article 93 says…..

Shri T. T. Krishnamachari : If it will help the Honourable Member, we can say, there will be a Consolidated Fund Bill No. I before an Appropriation Act, which will have the main skeleton.

The Honourable Shri K. Santhanam : What I want to know is whether the Consolidated Fund Bill No. I will also consist of the charged and non-charged amounts and voted and non-voted amounts, or will give only the votable portion.

The Honourable Dr. B. R. Ambedkar : The charged portion occurs only in the final Appropriation Act. This voting account gives what in the technical language of the House of Commons are called supply services as distinct from services charged on the revenues.

The Honourable Shri K. Santhanam : This article says that the provisions of articles 93 and 94 will have to be complied with.

The Honourable Dr. B. R. Ambedkar : Articles 93 and 94 mean the voting of Appropriation Act.

The Honourable Shri K. Santhanam : Article 93, first part, says that the charged portion would be shown and the second part says that such portion as is votable shall be presented to the vote. I want to know whether both these portions will be appplicable to the voting account.

The Honourable Dr. B. R. Ambedkar : Article 93 says that the vote of the House is not necessary for services charged on the revenues of India.

The Honourable Shri K. Santhanam : But, they will have to be shown in the Appropriation act.

The Honourable Dr. B. R. Ambedkar : When passed. This is what is called Consolidated Fund Act I.

The Honourable Shri K. Santhanam : Article 94 does not deal with Consolidated Fund Act.

The Honourable Dr. B. R. Ambedkar : That is also the Appropriation Act. As I stated before, there is no distinction. The Appropriation Act shows the details while the Consolidated Fund Act does not show details.

The Honourable Shri K. Santhanam : I do not think Dr. Ambedkar's explanations can override the precise provisions of an article. As the article stands, all the provisions of articles 93 and 94 will apply to this Consolidated Fund as to the other. Therefore, the entire budget procedure will have to be duplicated.

The Honourable Dr. B. R. Ambedkar : If the honourable Member will read carefully sub-clause (2), he will see what sub-clause it deals with. It says, "The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (I).

The Honourable shri K. Santhanam : Please read on.

The Honourable Dr. B. R. Ambedkar : As I stated, there is no question of grant with regard to services charged *on* the revenues.

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***The Honourable Dr. B. R. Ambedkar :** Sir, I do not think there is any necessity to say anything more. I am only moving an amendment:

> "That after sub-clause (c), of clause (1), the following words be added after 'and' and before 'to':—
>
> 'Parliament shall have power.'"

[Amendment was accepted along with Dr. Ambedkar's previous motion. Article 96, as amended, was added to the Constitution]

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*CAD, Vol. VIII, 10th January 1949, p. 774.

ARTICLE 97

The Honourable Dr. B. R. Ambedkar : I do not think any reply is called for, but I would like. Sir, with your permission to move one amendment myself. I move :

> "That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Shri H. V. Kamath : The words at the end of the clause have been needlessly repeated.

The Honourable Dr. B. R. Ambedkar : I do not think so.

* * * * *

Mr. President : I shall now put Dr. Ambedkar's amendment. The question is :

> "That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Article 97, as amended, was added to the Constitution.

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ARTICLE 98

†**The Honourable Dr. B. R. Ambedkar :** All that I can say is that I cannot accept Mr. Jaspat Roy Kapoor's amendment. It is much better that the matter be left elastic to be provided for by rules. With regard to Mr. Kamath's amendment, I certainly feel drawn to it. But for the moment I cannot commit myself, but I can assure him that this matter will be considered by the Drafting Committee.

Mr. President : Then I do not put Mr. Kamath's amendment to the vote. I treat it as a drafting amendment which the Drafting Committee will consider.

With regard to Mr. Jaspat Roy Kapoor's amendment No. 15 I would like to draw Dr. Ambedkar's attention to one point. In clause (2) of article 98 we have the words :

> "With respect to the Legislature of the Dominion of India."

In another place we have used the expression "Constituent Assembly of India". I suppose Dr. Ambedkar would like to have the same expression here also ?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. President : I was pointing out that here in this clause (2), the expression "Legislature of the Dominion of India" occurs. Perhaps, the expression 'Constituent Assembly of India' will be better ?

*CAD, Vol. VIII, 10th January 1949, pp. 777-78

† *Ibid.,* pp. 780-81.

The Honourable Dr. B. R. Ambedkar : We have now got two Assemblies so to say, the Constituent Assembly sitting as Constituent Assembly and the Constituent Assembly sitting as legislature. We have rules on both sides. I think therefore it would be desirable to retain the words 'Dominion of India', so that we could adopt the rules which are prevalent on the other side.

Shri Jaspat Roy Kapoor : My submission is that for the words 'Legislature of the Dominion of India' we may have the words 'Constituent Assembly of India' and the words 'Legislative' with in brackets. That is how we have describing our Constituent Assembly when it functions as Legislature.

The Honourable Dr. B. R. Ambedkar : We have to use the language of the India Independence Act. We have to restrict ourselves to the terminology of the Act.

Mr. President : If it will not create any difficulty, I do not mind it. I will put the amendment moved by Shri Jaspat Roy Kapoor to vote.

Shri Jaspat Roy Kapoor : Sir, I seek leave of the House to withdraw it. I do not want it to have the fate of a defeated amendment.

Mr. President: If the House grants him leave to withdraw his amendment, it may be withdrawn.

[The amendment was, by leave of the Assembly, withdrawn. Article 98 was added to the Constitution.]

* * * * *

NEW ARTICLE 98-A

***Mr. President:** We have notice of an amendment to insert a new article by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I move :

"That after article 98, the following new article he inserted :—

Regulation by law of procedure in Parliament in relation to financial business.

'98-A. Parliament may. for the purpose of the timely completion of the financial business, regular by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated fund of India' and. if and in so far as the provision of any law so made is inconsist with any rule made by a House of Parliament under the last preceding article or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.'"

Mr. President : As no Member desires to speak on this amendment, I shall put the motion to vote.

The motion was adopted.

Article 98-A was added to the Constitution.

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*CAD, Vol. VIII, 10th June 1949, p. 781.

ARTICLE 173

***Mr. President :** ...Dr. Ambedkar may move the next amendment, No. 2464.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (4) of article 173, alter the words 'deemed to have been passed' the words by 'both Houses in the form in which it was passed' be inserted."

[The amendment of Dr. Ambedkar was accepted.]

Article 173, as amended, was added to the Constitution.

ARTICLE 174

†Mr. President: Dr. Ambedkar, there are two amendments in your name Nos. 69 and 70 of List I. These are only to bring this article into line with the provisions which we have already adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for sub-clause (c) and (d) of clause (1) of article 174, the following be substituted :

(c) the custody of the Consolidated Fund or the Contingency fund of the State, the payment of moneys into or the withdrawal of moneys from any such fund;

'(d) the appropriation of moneys out of the Consolidated Fund of the State'."

and also —

"That in sub-clause (e) and (f) of clause (1) of article 174, for the words 'revenue of the State 'the words 'Consolidated Fund of the State' be substituted."

‡Mr. President: There are no other amendments to this article. I shall now put it to vote.

Shri H. V. Kamath : Does not Dr. Ambedkar want to say anything in the matter ?

The Honourable Dr. B. R. Ambedkar : All I can say is that I shall look into the matter when we take up the revision of the Constitution.

[Dr. Ambedkar's amendments were adopted.]

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#Shri H. V. Kamath : As Dr. Ambedkar has promised to look into the matter, I will leave it to his wisdom. He might exercise it at a later stage.

Mr. President : Both the amendments ?

The Honourable Dr. B. R. Ambedkar: There is only one amendment.

Shri H. V. Kamath : May I ask which one he promised to look into ? Perhaps he will make it clear.

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*CAD, Vol. VIII, 10th June 1949, p. 782.

† *Ibid.,* pp. 782-83.

‡*Ibid., p.* 783.

#*Ibid.,* p. 784.

The Honourable Dr. B. R. Ambedkar : Amendment No. 2466.

Mr. President : Very well, then, 1 will not put them to vote.

Article 174, as amended, was added to the Constitution.

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***The Honourable Dr. B. R. Ambedkar :** I want article 175 to be held over.

Shri T. T. Krishnamachari : I suggest articles 175 and 176 may be held over as they affect some problems which the Drafting Committee are still considering. Article 177 may be taken.

Mr. President : Then we shall take up article 177.

ARTICLE 177

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in sub-clauses (a) and (h) of clause (2) of article 177. for the words 'revenues of the State' the words 'Consolidated Fund of the State' be substituted."

I move:

"That in clause (3) of article 177, for the words 'revenues of each State', the words 'Consolidated Fund of each State' be substituted."

Sir, I also move :

"That in sub-clause (b) of clause (3) of article 177, for the word 'emoluments' the word 'salaries' be substituted."

[Dr. Ambedkar's all amendments were carried.]

ARTICLE 178

‡**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in clause (1) of article 178, for the words 'revenues of a State', the words 'Consolidated Fund of a State' be substituted."

(Amendment No. 2490 was not moved).

Mr. President : The question is :

"That in clause (1) of article 178, for the words 'revenues of a State', the words 'Consolidated Fund of a State' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That article 178 as amended, stand part of the Constitution."

The motion was adopted.

Article 178, as amended, was added to the Constitution.

ARTICLE 179

#**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for article 179, the following be substituted :—

Appropriation Bills

'179. (1) As soon as may be after the grants under the last preceding article have been made by the Assembly there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Slate all money required to meet—

*CAD, Vol. VIII, 10th June 1949, p. 7S4.

† *Ibid.,* p. 784.

‡ *Ibid., pp.* 785-86.

Ibid., pp. 785-86.

(a) the grants so made by the Assembly, and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall he proposed to any such Bill in the I louse or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article'."

Mr. President : There is no other amendment to this article,

[The motion was adopted. Article 179, as amended, was added to the Constitution.]

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ARTICLE 180

***The Honourable Dr. B. R. Ambedkar :** Sir I move :

"That for article 180, the following article be substituted :—

'180(1) The Governor shall—

Supplementary additional or excess grants.

(a) if the amount authorised by any law made in accordance with the provisions of article 179 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the consolidated Fund of the State to meet such expenditure or grant.'"

Article 180, as amended, was added to the constitution

Amendment was adopted

ARTICLE 181

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 181. the following article be substituted :

Votes on account, votes on credit and exceptional grants.

181. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the Legislative Assembly of a state shall have power.

*CAD, Vol. VIII, 10th June 1949, pp. 786-87.

†*Ibid.,* pp. 787-88.

(a) to make any grant in advance in respect of the estimated expenditure for apart of any financial year pending the completion of the procedure prescribed in article 178 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 17° of this constitution in relation to that expenditure ;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot lie stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year :

and the Legislature of the state shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 178 and 179 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any Jaw to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.'"

[Motion was adopted. Article 181 as amended, was added to the Constitution.]

ARTICLE 182

***Mr. President :** The question is :

"That article 182 form part of the constitution."

The Honourable Dr. B. R. Ambedkar : With your permission, Sir, I seek to move a small amendment.

"That in article 182, for the words 'revenues of the State' the words 'Consolidated fund of the State' be substituted."

Mr. President : There is no other amendment.

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[The amendment was adopted. Article 182, as amended was added to the Constitution.]

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ARTICLE 183

†**Mr. President:** Does anyone else wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not accept this amendment. (of Mr. Sidhwa)

Mr. President: The question is :

"That in clause (1) of article 183, the word 'shall' be substituted for the word 'may 'and the following be added at the end :—

'within 6 months from the date of the first session of the assembly.'

The amendment of Mr. R. K. Sidhva was negatived.

Article 183 was added to the Constitution.

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*CAD, Vol. VIII, 10th June 1949, p. 788.
†*Ibid,* p. 789.
‡*Ibid.,* p. 790.

NEW ARTICLE 183-A

‡**Mr. President:** There is a new article 183-A proposed by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That after article 183, the following new article be inserted:—

Regulation by law of procedure in the Legislature of the State in relation to financial business.

'183-A. The Legislature of a State may, for the purpose of the timely completion of the financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and. if in so far as the provision of any law so made is consistent with any rule made by the House or either House of the Legislature of the State under the last preceding article or with any rule or standing order having effect in relation to the Legislature of the state under clause (2) of that article, such provision shall prevail.'"

Mr. President : Does anyone wish to say anything ? The question is :

"That new article 183-A be added to the constitution."

The motion was adopted.

Article 183-A, was added to the Constitution.

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ARTICLE 217

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***Mr. President:** I have not seen any amendment.

Prof. Shibban Lal Saksena : I gave notice of it this morning. I beg to move…..

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** We have not got copies of his amendment.

Shri L. Krishnaswami Bharathi (Madras : General)**:** We cannot follow what he is moving.

Mr. President : He gave notice of his amendment a few minutes before we actually sat. But I am told it is more or less word for word the same as No. 2741.

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†Prof. Shibban Lal Saksena : Sir, I feel that articles of this fundamental importance should not go unnoticed in this House merely because certain amendments are not moved by Members who gave notice of them.

The Honourable Dr. B. R. Ambedkar : I would like to raise one or two points about this. This seems to be a rather important matter. The first thing I want to know is whether this is an amendment or an amendment to an amendment. If it is an amendment to an amendment, it cannot be moved unless the main amendment is moved.

*CAD, Vol. VIII, 13th June 1949, p. 793.

† *Ibid.,* p. 794.

Mr. President: It is an amendment to amendment No. 2743 which has been moved by Mr. Naziruddin Ahmad. The Honourable Member in his notice says that his amendment is an amendment to Nos. 2741, 2742, 2743, 2744 or 2745.

The Honourable Dr. B. R. Ambedkar : If it is to be taken as an amendment to No. 2743, then obviously, as this goes far beyond the scope of 2743, it cannot be moved unless the Member satisfies you that he is not substantially changing the original amendment. As it is, it is a pure reproduction of the amendment which stands in the names of Messrs. Santhanam, Ananthasayanam Ayyangar and others.

Following amendments moved by Mr. T. T. Krishnamachari were adopted.

"That in clause (2) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

"That in clause (3)ofarticle217,after the word and figure 'Part ' the words and figures "or Part III' be inserted."

The amendments were adopted

Article 217, as amended, was added to the Constitution.

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ARTICLE 224

***The Honourable Dr. B. R. Ambedkar :** I wish that article 224 and 225 be held over.

Mr. President: Article 224 and 225 are held over.

ARTICLE 226

The Honourable Dr. B. R. Ambedkar : I formally move amendment No. 2775.

Then I move an amendment to this.

Sir I move:

"That for amendment No. 2775 of the List of Amendments, the following be substituted :—

"That article 226 be renumbered as clause (1) of article 226, and

(a) at the end of the said clause as so renumbered the words 'while the resolution remains in force 'be added : and

(b) after clause (1) of article 226, as so renumbered, the following clauses be added :—

(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period'."

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†Mr. President: Before I put the amendment to the vote, do you wish to say anything, Dr. Ambedkar ?

*CAD, Vol. VIII, 13th June 1949, pp. 799-800.

† *Ibid.,* p. 809.

The Honourable Dr. B. R. Ambedkar : Much has already been said. Unless you desire me to speak, 1 would rather not say anything.

Mr. President : That is your choice.

[Article 226, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

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ARTICLE 229

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***The Honourable dr. B. R. Ambedkar :** Sir, I move :

"That with reference to amendments Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted :—

'(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in article 226 and 227 of this Constitution should he regulated in such States by Parliament bylaw, and resolutions to that effect are passed by the House or. where there are two Houses, by both the Houses of the Legislature of each of the States, it shall be lawful for Parliament, to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or. where there are two Houses, by each of the Houses of the Legislature of that State.'"

I would like to explain this amendment in a few brief sentences. The original article as it stood said : "If it appears to the Legislature or Legislatures of one or more States to be desirable, etc." The new amendment said "if it appears to the Legislatures of two or more States to be desirable etc." Under the new amendment it would be open to invoke the aid of Parliament to make a law only if two or more States join, and sent a resolution. The other changes in sub-clause (1) of article 229 are merely consequential to this principal amendment, namely, that the power can be invoked only if two or more States desire, but not by a single State.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I quite appreciate the point raised by my Honourable Friend Mr. Santhanam; but 1 think he has not carefully read sub-clause (2). The important words are : 'in like manner', so that if the State legislatures in whose interest this legislation is passed in like manner, that is to say by resolution, agree that such legislation be amended or repealed. Parliament would be bound to do so.

The Honourable Shri K. Santhanam : "May be amended".

The Honourable Dr. B. R. Ambedkar : 'May' means shall. There is no difficulty at all.

[Dr. Ambedkar's amendment was adopted. Article 229 as amended, was added to the Constitution.]

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*CAD, Vol. VIII, 13th June 1949, p. 811.

†*Ibid.,* p. 512.

ARTICLE 230

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in article 230, for the words 'for any Slate or part thereof', the words 'for the whole or any part of the territory of India' be substituted."

[The amendment was adopted without further discussion. Article 230, as amended, was added to the Constitution.]

ARTICLE 231

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That with reference to amendment No. 2788 of the List of amendments, in clause (2) of article 231, after the word and figure 'Part I' the words and figures 'or Pari III' be inserted."

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‡**The Honourable Dr. B. R. Ambedkar :** Sir, I agree that Mr. Thanu Pillai's point requires explanation. Now the explanation is this. I am sure he will agree that the rule regarding repugnancy which is mentioned in article 231 must be observed so far as future laws made by Parliament are concerned. He will see that the wording in article 231 is 'whether passed before or alter'. Surely with regard to laws made by Parliament after the commencement of this Constitution, the rule of repugnancy must have universal application with regard to laws made both by the States in Part I and by the States mentioned in Part III. With regard to the question of repugnancy as to the laws made before the passing of this Constitution, the position is this. As I have said so often in this House, it is our desire and I am sure the desire of the House that all articles in the Constitution should be made generally applicable to all States without making any specific differentiation between States in Part I and Part III. It is no good that whenever you pass an article you should have added to that article a proviso making some kind of saving in favour of States in Part III, although there is no doubt about it that some savings will have to be made with regard to laws made by States in Part III. That is proposed to be done, as I said, in a new Part or a new Schedule where the reservation in respect of States in Part III will be enacted, so that so far as laws made before the Constitution comes into existence are concerned, they would be saved by some provision enacted in that special form or special Schedule. I should like to add to that one more point *viz.,* that while it is proposed to make reservations in that special part in favour of Part III States, nonetheless that reservation could not be absolute because the reservations made therein, at any rate some provisions in that special part, will be governed by article 307 which gives the President the power to make adaptations. Now that adaptation will apply both to States in Part I as well as to States

*CAD, Vol. VIII, 13th June 1949, p. 813.

† *Ibid*., p. 813.

‡ *Ibid.,* pp. 814-15.

in Part III. Therefore so far as regards laws made by Parliament or the Legislatures of States in Part III before the commencement, they will in the first instance be saved from the operation of article 231 but they will also be subject to the provisions of article 307 dealing with adaptation.

[Dr. Ambedkar's amendment, as mentioned earlier was accepted. Article 231, as amended, was added to the Constitution.]

ARTICLE 232

***Mr. President:** We take up article 232.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That the heading to article 232 'Restriction on Legislative Powers' be omitted."

With your permission I move my new amendment:

"(i) That after the word and figure 'Part I' the words and figures 'or Part III' be inserted ; and

(ii) after clause (a) of article 232, the following clause be inserted :—

'(aa) where the recommendation required was that of the Ruler, either by the Ruler or by the President'."

Now Sir, I have come to understand that there is some sentimental objection to the use of the word 'ruler'. I am prepared to yield to that sentiment and what I therefore propose is that the House should accept this amendment for the moment and leave the matter to the Drafting Committee to find a better word to replace the word 'ruler'. Otherwise the whole of the article would have to be unnecessarily held over for no other reason except that we cannot find at the moment a better word to substitute for the word 'ruler'.

[All the above amendments of Dr. Ambedkar were adopted. Article 232, as amended, was added to the Constitution.]

ARTICLE 234

Mr. President: We take up No. 234.

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

That the following new clause be added to article 234 :—

(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last precending clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.

[The amendment was adopted. Article 234, as amended was added to the Constitution.]

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*CAD, Vol. VIII, 13th June 1949, p. 815.

†*Ibid.,* p. 816.

ARTICLE 238

***The Honourable Dr. B. R. Ambedkar :** Sir, I formally move No. 2807 :

"That in the proviso to article 238, for the words 'under the terms of any agreement entered into in that behalf by such State with the Union' the words 'under the terms of any instrument or agreement entered into in that behalf by such State with the Government of the Dominion of India or the Government of India or of any law made by Parliament under article 2 of this Constitution' be substituted."

I move further:

"(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words 'bylaw 'the words 'made by Parliament' be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted."

The amendment was adopted.

Article 238, as amended, was added to the Constitution.

ARTICLE 239

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 239, before the word 'State 'where it occurs for the second tune in line 29, the word 'other' be inserted."

The amendment was adopted.

Article 239, as amended, was added to the Constitution.

ARTICLE 240

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for clause (1) of article 240, the following new clauses be substituted :—

'(I) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the isues involved are not sufficient importance to warrant such action, appoint a Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.

(1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation'."

[The amendment was adopted Article 240 as amended, was added to the Constitution.]

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*CAD, Vol. VIII, 13th June 1949, p. 817.

† *Ibid.,* p. 817.

‡ *Ibid.,* p. 818.

ARTICLE 112-B

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for amendment No.23, the following amendment he substituted :—

"That after the new article 112-A, the following article he inserted :—

Conference on the Supreme Count of Appellate jurisdiction with regard to criminal matters.

112-13 Parliament may by law confer on the Supreme Court power to entertain and hear appeals hum any judgment, final order or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be speed led in such law.

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ARTICLE 111-A

†**Mr. President:** Dr. Ambedkar will now move his amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I move :

"That with reference to amendments Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A, the following be substituted :—

Appellate jurisdiction of Supreme Court with regard to criminal matters.

111-A (1) The Supreme Court shall have power to entertain and hear anneals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India—

(a) if the High Court has on appeal reversed the order of acquital of an accused person and sentenced him to death; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time he made by the Supreme Court and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

I do not wish to say anything at this stage but I shall reserve my remarks towards the end after hearing the course of debate on my new amendment.

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‡**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I rise to make just a few observations in order to give the House the correct idea of what is proposed to be done by the introduction of this new article 111-A. The first tiling which I should make clear is that it is not the intention of article 111-A to confer general criminal appellate jurisdiction upon the Supreme Court. The jurisdiction sought to be conferred is of a very limited character.

*CAD, Vol. VIII, 13th June 1949, p. 824.

† *Ibid.,* 14th June 1949, p. 840.

‡ *Ibid.,* 14th .Tune 1949, pp. 853-57.

In showing the necessity why it is desirable in my judgment to confer appellate criminal jurisdiction upon (be Supreme Court as specified in the sub-clauses of article 111-A, I propose to separate sub-clauses (a) and (b) from sub-clause (c) because they stand on a different footing. As the House knows, (a) and (b) confine the appellate jurisdiction of the Supreme Court only to those cases where there has been a sentence of death : in no other case the Supreme Court is to have criminal appellate jurisdiction. That is the first point that bas to be borne in mind.

I shall state briefly why it is necessary to confer upon the Supreme Court this limited appellate jurisdiction in cases where there bas been a sentence of death passed upon an accused person. The House should note that so far as our criminal jurisprudence, as it is enshrined in the Criminal Procedure Code, is concerned, there is one general principle which has been accepted without question and that principle is this that where a man has been condemned to death he should have at least one right of appeal, if not more.

Mr. President: May I just point out one thing? Your amendment does not cover the case of a person whose sentence has been enhanced to a sentence of death.

The Honourable Dr. B. R. Ambedkar : We do not propose to give such a thing. That is the point. With regard to enhancement of the sentence we do not propose to confer criminal jurisdiction of an appellate nature on the Supreme Court. We do it with open eyes and I think everybody ought to know it. That is not the intention. It must be generally accepted that where a man has been condemned lo death he should have at least one right of appeal. Starting with that premise and examining the provisions of the Criminal Procedure Code it will be found that there are three cases where this principle is, so to say, violated or not carried into effect. The first case is the case where, for instance, the District Judge acting as a Sessions Judge acquits an accused person; the Government which has been invested with a right of appeal against the acquittal appeals lo the High Court, and the High Court i n its appellate jurisdiction condemns the man to death. In a case like this no appeal is provided. That is one exception to the premise.

The second case is the case of the Sessions Judge in the High Courts of Bombay, Calcutta and Madras, where sitting in a Sessions Court he acquits a criminal; then the government takes an appeal to the High Court

on its appellate side and the appellate side on hearing the appeal condemns the man to death. There again there is no appeal. Then there is the third case, which is worse, namely, that under section 526 of the Criminal Procedure Code a High Court, in exercising of the powers conferred upon it by that section, withdraws a case to itself and passes a sentence of death. There again there is no appeal.

Mr. Naziruddin Ahmad : There is a right of appeal in such cases.

The Honourable Dr. B. R. Ambedkar : No. No appeal from the High Court.

Mr. Naziruddin Ahmad : Under section 411-A of the Criminal Procedure Code.

The Honourable Dr. B. R. Ambedkar : Section 411-A applies only to the High Courts of Calcutta, Bombay and Madras. Even there it does not apply to all cases or to cases where such High Courts have acted under section 506. Section 411-A is confined to appeals from the judgment of High Courts sitting on the original side, in sessions. Therefore, Sir.....*

Pandit Lakshmi Kanta Maitra : Section 526 generally refers to transfer of cases.

The Honourable Dr. B. R. Ambedkar : When a case is transferred and tried by the High Court, there is no right of appeal. It has extraordinary jurisdiction. Therefore these are three flagrant cases where the general principles that a man who has been condemned to death ought to have at least one appeal is not observed. I think, having regard to the enlightened conscience of the modern world and of the Indian people, such a provision ought to be made. The object of sub-clauses (a) and (b) therefore is to provide a right of appeal to a person who has been acquitted in the first instance and has been condemned to death finally by the High Court. I do not think that on grounds of conscience or of humanity there would be anybody who would raise objection to the provisions contained in sub-clauses (a) and (b).

Now I come to sub-clause (c). With regard to this the House will remember that it has today an operative force under the Criminal Procedure Code, section 411, so far as the High Courts of Calcutta, Madras and Bombay are concerned. This right of appeal to the Privy Council on a certificate from the High Court that it is a lit case was conferred by the Legislative Assembly in the year 1943, and very deliberately. We have therefore before us two questions with regard to the

*Dots indicate interruption.

provision contained in section 411 of the criminal Procedure Code. There are two courses open to this House : either to take away this provision altogether or to extend this provision to all the High Courts. It seems to me that if you take away the provisions contained in section 411 which permit an appeal on a certificate from the High Court, you will be deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, in three different provinces. That seems to me an unnatural proceeding—to take away a judicial right which has already become, so to say, a vested right. The only alternative course therefore is to enlarge the provisions in such a manner that it will apply to all the High Courts. And the course that has been adopted in my amendment is the second course, namely, to extend it to all the High Courts. My Friends who are agitated that this might open the flood-gates of criminal appeals to the Supreme Courts have, I think, forgotten two important considerations. One important consideration is that the power of hearing appeals which is proposed to be conferred on the Supreme Court under sub-clauses (a) and (b) of clause (1) of the new article may vanish any moment that the legislature abolishes the death penalty. There will be no such necessity left for appeals to the Supreme Court if the legislature, thinking of what is being said in other parts of the world with regard to death penalty, and taking into consideration the traditions of this country, abolishes the death penalty; in that case sub-clauses (a) and (b) would ultimately fall into desuetude and the work of the Supreme Court so far as criminal side is concerned will diminish if not vanish.

With regard to sub-clause (c) it will be noticed that it has been confined in very rigid limits by the proviso which goes along with it, namely "Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require." Therefore, the certificate is not going to be an open process available merely for the asking. It will be subject at both ends to the conditions and limitations laid down by the High Court and the rules made by the Supreme Court. Therefore it will be realised that sub-clause (c) is a very rigid provision. It is not flexible and not as wide as people may think.

Pandit Lakshmi Kanta Maitra : Modified by the proviso.

The Honourable Dr. B. R. Ambedkar : Yes, as modified by the proviso.

Now, I come to clause (2) of my amendment. There you have got the general power given to Parliament to enlarge the criminal jurisdiction of the Supreme Court beyond the three cases laid down in my amendment. There was a point of view that the three cases mentioned in clause (1) of my amendment ought to be enough and that there ought not to be a door kept open for Parliament for enlarging the criminal jurisdiction of the Supreme Court and that sub-clauses (a), (b) and (c) ought to be the final limit of criminal jurisdiction of the High Court. Well, the only answer I could give is this : It is difficult to imagine what circumstances may arise in future. I think it would be better to believe it if a man said that there would be no circumstances arising at all requiring Parliament to confer some kind of criminal appellate jurisdiction upon the Supreme Court. Supposing such a contingency did arise and if the provisions of clause (2) of my new article were not there, what would be the position ? The position would be that the Constitution would have to be amended by the procedure we are proposing to lay down in a subsequent part of this Constitution. The question therefore is this : should we made it as hard as that, that the Parliament should also not have the power unless the Constitution is amended, or should we leave the position flexible by enabling Parliament to enact such law leave the time, the circumstances and the choice to the Parliament of the day ?

The Honourable Shri K. Santhanam (Madras : General) May I point out that under article 114 Parliament will still have the power to invest the Supreme Court with jurisdiction.

The Honourble Dr. B. R. Ambedkar : I am afraid 114 does not deal with that matter. I have not got the copy with me; otherwise I would have replied. It is only with regard to the Union List.

The Honourable Shri K. Santhanam : It deals with the jurisdiction of the Supreme Court in relation to mailers contained in the Union List.

The Honourable Dr. B. R. Ambedkar : Yes, but supposing they want to enalrge the jurisdiction with regard, for instance, to the Concurrent List, List III, they cannot use article 114.

Now, Sir, I come to some of the observations which were made by my Friend, Mr. Alladi Krishnaswami Ayyar. His observations related mostly to sub-clause (3). His first question was, what is the use of having sub-

clause (3) if the provisions of sub-clause (3) are hedged round by the provisions contained in the proviso which goes with it, viz., rules to be made by the Supreme Court.

Pandit Lakshmi Kanta Maitra : It is sub-clause (c) and not sub-clause (3).

The Honourable Dr. B. R. Ambedkar : I am sorry, it is sub-clause (c). His point is that there is no use of having sub-clause (c) hedged as it is by the provisions laid down in the proviso. The first thing I would like to remind my Friend, Mr. Alladi Krishnaswami Ayyar is this, that the proviso which is attached to sub-clause (c) is word for word the proviso attached to Section 411 of the Criminal Procedure Code and word for word the proviso contained in article 109 of the Civil Procedure Code. My Friend, Mr. Alladi Krishnaswami Ayyar, will remember that we have introduced in the appellate civil jurisdiction of the Supreme Court a clause which is absolutely word for word the same as sub-clause (c) of clause (1) of article 111-A. Now, I should have thought that if there was some residue of good in sub-clause (c) of clause (1) of article 111**,** hedged as it is with all the limitations as lo the rules to be made by the Supreme Court, as a man of commonsense, I should think, that there must be some residue of good left in sub-clause(c) here, notwithstanding the limitations contained in the proviso. My Friend also stated that there is a provision contained in article 112 which confers upon the Supreme Court the right lo admit an appeal by special leave, which article is not limited to civil appeal but is a general article which speaks of any cause or mailer. His point was that if that is there, why have sub-clause (c) ? My answer to him is again the same. If 112 defines the jurisdiction which the Supreme Court has over the High Courts, if that is there in civil mailers, why have sub-clause (c) in clause (1) of Article 111-A ? My answer to him is this : If we can have sub-clause (c) in civil mailers, notwithstanding the fact that we have 112, what objection can there be to have sub-clause (c) though we have 112 7 The point to be borne in mind is this that with regard to 112 we have left the Supreme Court with perfect freedom to lay down the conditions on which they will admit appeals. The law does not circumscribe their jurisdiction in the mailer.

Shri Alladi Krishnaswami Ayyar : There is a condition in the case of civil appeals.

The Honourable Dr. B. R. Ambedkar : It is true. Now, I do not know how this article 112 will be interpreted by the Supreme Court. We have left it to them to interpret it. They may interpret it in the way in which the Privy Council has interpreted it or they may interpret it in any manner they choose ; either they may put a limited interpretation or they may put a wider interpretation. In case they put a limited interpretation, then I have no doubt about it that sub-clause (c) will have some value. I therefore submit, Sir, that my amendment is such that it meets the exigencies of the cases, satisfies the conscience of some people who object to people being hanged without having any right of appeal. I think it is so worded that the Supreme Court will not administratively or otherwise be overburdened with criminal appeals. I hope my Friends will now withdraw their amendments and accept mine.

Shri C. Subramaniam (Madras : General) **:** On a point of clarification, as to the implication of the difference of language……

The Honourable Dr. B. R. Ambedkar : It is too late now.

Mr. President: The Honourable Doctor has not shown in his reply why he makes a distinction between cases in which death sentence has been passed for the first time by the High Court in revision by way of enhancement of sentence and cases in which death sentence is passed in reversal of a judgment of acquittal.

The Honourable Dr. B.R. Ambedkar : The case of an appeal against enhancement of sentence differs from a case of an appeal against acquittal in two respects. When the High Court enhances the sentence against an acused person it is not convicting him for the first time. The accused already stands convicted. In the case of an appeal against acquittal the High Court is reversing the finding of the trial court and convicting the accused. The second point of differenee is that in the case of enhancement the proceedings are converted into regular appeal so that in an enhancement proceedings the accused gets a statutory right of appeal under the Criminal Procedure Code to show that not only enhancement of sentence is not warranted but even his conviction is not justified by the facts of the case. In enhancement cases there is already one appeal. That being so, no further appeal is necessary. Thirdly, the amendment recognizes conviction or acquittal as the basis for a right of appeal to the Supreme Court. It does not recognize the nature of sentence or the type of punishment as the basis for a right of appeal.

Mr. President: Supposing in a ease the trial court holds that it is a case of grievous hurt, although it has resulted in death and passes a sentence of imprisonment and supposing there is an appeal to the High Court which by way of revision holds that it is a case of murder and not grievous hurt and gives a sentence of death. For the first time, the conviction is for murder by the High Court and the sentence of death is also passed for the first time.

The Honourable Dr. B. R. Ambedkar : For the moment I am not prepared to go beyond the proposition as set out in my amendment. If Parliament later on thinks that such a case ought to be provided, it has perfect liberty under clause (2).

Mr. President: It is a different matter and is for the House to decide. For myself, I have not been able to find the distinction.

Shri H. V. Pataskar (Bombay : General) **:** I have moved amendment No. 25 to the original amendment No. 24 of the Honourable Dr. Ambedkar.

Mr. President : There is no time for that. I think you are too late now. We cannot allow it at this stage.

I have to put the various amendments now and those Honourable Members who think that their amendments are covered by the new amendment of Dr. Ambedkar, I hope, would withdraw them.

[The amendment of Dr. Ambedkar was adopted. Other amendments were mostly withdrawn. One was rejected. Article 111-A as amended, was added to the Constitution.]

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ARTICLE 164

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in clause (1) of article 164 for the words 'Save as provided' the words 'Save as otherwise provided' be substituted."

[Without discussion Amendment was accepted. Article 164, as amended was added to the Constitution.]

ARTICLE 167-A

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†**The Honourable Dr. B. R. Ambedkar :** Sir, various points have been raised in the course of this detabe and I should like to deal with them one by one. If I heard my Friend Mr. Sidhva correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of

*CAD, Vol. VIII, 14th June 1949, p. 860.

†*Ibid.,* pp. 865-67.

article 165 are not complied with it does not cause a vacancy—the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless lie has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

Shri R. K. Sidhva : Why should it go to the Election Commission ?

The Honourable Dr, B. R. Ambedkar : I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused : there is only disability of taking part in the proceedings of the House.

Now, I come to the main amendment moved by my Honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seal. Although it is not so expressly stated, it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constitutency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power lo call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned, I find no difficulty in accepting it.

Now, I come to clause (2). This is rather widely worded. It says that any question regarding disqualification shall be decided by the Governor provided he obtains the option of the Election Commission and that he is bound lo act in accordance with such option. If members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of the Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvenet or whether he is under any acknowledgment or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e)

I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

Shri L. Krishnaswami Bharathi : Cannot the Election Commission make the necessary enquiries ?

The Honourable Dr. B. R. Ambedkar : There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167.I would therefore with your permission propose to amend clause (2) thus : "Before giving any decision on any question relating to disqualifications arising under sub-clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

Mr. President : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurrs certain disqualifications. These will be dealt with by the Election Commission.

The Honourable Dr. B. R. Ambedkar : What happens is that, after filing a petition, the Commission may find a candidate guilty of certain offences during the course of the election, after the election has taken place and the member has taken his seat.

Mr. President : Is not the Election Commission entitled to deal with such cases ?

The Honourable Dr. B. R. Ambedkar : Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of the Court that he has committed offences under the Election Act. That would also come under (e). After a man has taken his seat……..

Mr. President: It seems to me that there are two kinds of disqualifications. A member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

The Honourable Dr. B. R. Ambedkar : That would depend upon what sort of procedure we lay down at a later stage.

Mr. President: But a man may become subject to a disqualification after taking his seat in the House.

The Honourable Dr. B. R. Ambedkar : That is what (e) provides for.

Mr. President : Then other disqualification may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

The Honourable Dr. B. R. Ambedkar : Those are dealt with here. They are all about sitting members.

Shri L. Krishnaswami Bharathi : Please read the amendment.

The Honourable Dr. B. R. Ambedkar : There are two sorts of disqualifications : disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are chosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

The Honourable Shri K. Santhanam : Both are covered by 167-A.

The Honourable Dr. B. R. Ambedkar : That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election-or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provision permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things lumped together.

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Mr. President: Then Mr. T. T. Krishnamachari's amendment.

"That for amendment No. 2441 of the List of Amendments, the following be substituted :—

"That after article 167, the following new article be inserted :—

Decision on questions as to disqualification of memebers.

167-A. (1) If any question arises to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the Governor and his decision shall final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

The amendment was adopted.

New Article 167-A was added to the Constitution.

[Article 167-A, as amended by Dr. Ambedkar's amendment was added to the Constitution.]

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ARTICLE 203

***Mr. President:** We take up 203.

The Honourable Dr. B. R. Ambedkar: It is to be held over.

Shri T. T. Krishnamachari : 203 (2) (b)—there is the question of whether the particular sub-clause should be retained or modified. We require some time and we might be ready with it tomorrow.

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NEW ARTICLE 209-A

† **Mr. President:** There are certain new articles proposed, No. 209-A.

The Honourable Dr. B. R. Ambedkar : 209-A is to be held over.

Mr. President : Mr. Shibban Lal Saksena has given notice of one.

Prof. Shibban Lal Saksena : That also may be held over.

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ARTICLE 203

‡**The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, Sir, I move :

"That in article 203, for the marginal heading, the following be substituted :—

'Power of superintendence over all courts by the High Court'."

I also move:

"That in clause (2) of article 203, before the words 'The High Court may', the words 'Without prejudice to the generality of the foregoing provisions', be inserted."

I further move:

"That with reference to amendment No. 2664 of the List of Amendments—

(i) in clause (1) of article 203, after the words 'all courts 'the words 'and tribunals 'be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted."

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Amendments were adopted.

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[Article 203, as amended by the above amendments was added to the Constitution.]

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ARTICLE 270

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#The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendments Nos. 2975 and 2976 of the List of amendments, in article 270, for the words 'assets and liabilities' the words 'assets, liabilities and obligations' be substituted."

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*CAD, Vol. VIII, 14th June 1949, p. 873.

†*Ibid.,* p. 873.

‡*Ibid.,* 15th June 1949, p. 875.

#*Ibid*, p. 877.

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words "Government of India" to indicate the Government that will come into existence under the new Constitution, while the "Government of the Dominion of India" is a term which is being used to indicate the Government at the present moment. Consequently, if his amendment is accepted, it would mean that the Government of India is succeeding to the liabilities, obligations and assets of the Government of India. It would make absurd reading. Therefore the words as they are there, are very appropriate and ought to be retained.

The Honourable Shri K. Santhanam (Madras : General) **:** I am afraid we are passing tills article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

The Honourable Dr. B, R. Ambedkar : What is your amendment ?

The Honourable Shri K. Santhanam : I am not moving any amendment....

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution ? The reply to that, is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the Provinces. They were all held by that single Corporation which was called the Secretary of State-in-Council which was liable to be sued and had the right to sue. The Government of India Act, 1935 made a very significant change, viz., it divided the assets and

*CAD, Vol. VIII, 15th June 1949, pp. 883-85

liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts—assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the Provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different Provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall he held by His Majesty for the Government of India and they shall also he held by His Majesty for the different Provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of this Constitution, What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned. Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act, such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act 1935 is repealed. In fact we are doing no more than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says is that notwithstanding the repeal of the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act of 1935. I hope the House will now understand why it is necessary to have tins clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First,

we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as an integral State without perhaps any kind of modifications. The other case relates to States which have been merged together with neighbouring Indian Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the Constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of the kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their Covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been mergd with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian Province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring Province as to how the assets and liabilities of that merged State are to be carried over,— whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Province in which the State is merged. In any case what the article says is that from the commencement of this Constitution—these words are important and I will for the moment take it that it will commence on 26th January—any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution. If, for instance, no agreement has been reached before the commencement of the Constitution, then the Central Government as well as the Provincial Governments would be perfectly free to create any

new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III, Therefore, so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

Shri Mahavir Tyagi : May I know it the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also ?

The Honourable Dr. B. R. Ambedkar: It speaks of assets and liabilities and obligations. If, for instance, a Province has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension, that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

Shri H. V. Kamath : May I know why the word "rights" mentioned in the marginal sub-head is omitted in the article ?

The Honourable Dr. B. R. Ambedkar : The Drafting Committee will look into it.

Shri B. Das : With regard to properties possessed by India in foreign countries, specially in the U. K. may I know why those are not included among properties in article 270 ?

The Honourable Dr. B. R. Ambedkar : I think that property is subject to partition between India and Pakistan, *e.g.,* the India Office Library, etc., I understand that is being discussed.

Shri B. Das : What about the Sterling Balances ?

The Honourable Dr. B. R. Ambedkar : My Honourable Friend knows more about it than I do.

[Article 270, as amended by the only amendment of Dr. Ambedkar, was added to the Constitution.]

ARTICLE 271

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 271 —

(i) the words 'for the purposes of the Government of that State' in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted."

[Amendment was carried. Article 271, as amended was added to the Constitution.]

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NEW ARTICLE 271-A

†**The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move :

"That the following new article be added after article 271—

All lands, minerals and other things of value lying within territorial waters vest in the Union.	271-A. All lands minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of Union'."

This is a very important article. We are going to have intergrated into the territory of India several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negative any such contention being raised hereafter it is necessary to incorporate this article.

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‡**Shri H. V. Kamath :** ...Then again, the article says "All lands, minerals and other things of value underlying the ocean within the territorial waters of India ". In Schedule I we have defined the States and the territories of India. But nowhere in this Constitution have we defined what the 'Indian territorial waters 'are. The Constitution is silent on this point.

Mr. President: It is a well-understood expression in International Law.

The Honourable Dr. B. R. Ambedkar : It is unnecessary to define it separately.

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#**Shri H. V. Kamath :** I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

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*CAD, Vol. VIII, 15th .Tune 1949, p. 886.

†*Ibid.,* p. 887.

‡*Ibid.,* p. 887.

#*Ibid.,* p. 888.

Shri A. Thanu Pillai (Travancore States)**:** Mr. President, Sir, I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

The Honourable Dr. B. R. Ambedkar : May I ask what exactly I have to explain ?

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***Shri M. Ananthasayanam Ayyangar :** I would say "all lands, minerals and other things of value underlying the ocean within the territorial waters and the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

An Honourable Member : What about the air ?

Another Honourable Member : What about the heavens ?

The Honourable Dr. B. R. Ambedkar : Sir, I gave in my speech when I moved the amendment the reasons why we thought such an article was necessary. There seems to be some doubt raised by my Honourable Friend Mr. Pillai that this might also include the right to fisheries. Now I should like to draw his attention to the fact that fisheries are included in List II—entry No. 29.

Shri A. Thanu Pillai : My objection related to other matters as well.

The Honourable Dr. B. R. Ambedkar : I will come to that. I am just dealing with this for the moment. Therefore this entry of fisheries being included expressly in List No. II means that whatever jurisdiction the Central Government would get over the territorial waters would be subject to Entry 29 in List No. II. Therefore, fisheries would continue to be a provincial subject even within the territorial waters of India. That I think must be quite clear to my Honourable Friend, Mr. Pillai, now.

With regard to the first question, the position is this. In the United States, as my Honourable Friend, Shri Alladi Krishnaswami Ayyar said, there has been a question as to whether the territorial waters belong to the United States Government or whether they belong to several States, because you know under the American Constitution, the Central Government gets only such powers as have been expressly given to them. Therefore, in the United States it is a moot question as yet, I think, whether the territorial waters belong to the States or they belong to the Centre. We thought that this is such an important matter that we ought not to leave it

*CAD, Vol. VIII, 15th June 1949, pp. 891-93.

either to speculation or to future litigation or to future claims, that we ought right now to settle this question, and therefore this article is introduced. Ordinarily it is always understood that the territorial limits of a State are not confined to the actual physical territory but extend beyond that for three miles in the sea. That is a general proposition which has been accepted by International Law. Now the fear is—I do not want to hide this fact—that if certain maritime States such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say : "Our accession gives jurisdiction to the Central Government over the physical territory of the original States; but our territory which includes territorial waters is free from the jurisdiction of the Central Government and we will still continue to exercise our jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before accession belong to us." We therefore want to state expressly in the Constitution that when any maritime States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A.

Shri M. Ananthasayanam Ayyangar : What about the ownership of the waters themselves ?

The Honourable Dr. B. R. Ambedkar : What do you want to own water for ? You may then want to own the sky above.

Shri M. Ananthasayanam Ayyangar : For the manufacture of salt, etc.

The Honourable Dr. B. R. Ambedkar : Your laws will prevail over that area. Whatever law you make will have its operation over the area of three miles from the physical territory. That is what is wanted and that you get by this.

Shri Mahavir Tyagi : Waters have not been included.

The Honourable Dr. B. R. Ambedkar : According to the International Law, the territory of a State not only includes its physical territory, but also three miles beyond. Any law that you make will operate over that area.

Shri Mahavir Tyagi : What about the rest of the waters ?

The Honourable Dr. B. R. Ambedkar : Anything below the air you get.

Shri Mahavir Tyagi: What about waters beyond three miles ?

Shri M. Ananthasayanam Ayyangar : May I ask Dr. Ambedkar if he is not aware that water is as much a property as anything else, if not better property and disputes over water have arisen in plenty ? To avoid disputes between a Province and the Union, is it not desirable to include waters also in the property of the Indian Union ?

Mr. President: He has answered that; he thinks it is not necessary to say that.

The Honourable Dr. B. R. Ambedkar : Anything above the land goes with the land. If there is a tree above the land, the tree goes with the land. Water is above the land and it goes with the land,

An Honourable Member : Sir.....

Mr. President: I think we have sufficiently discussed and Dr. Ambedkar has replied to the debate. We need have no further discussion. I will put the article to vote.

Shri K. Hanumanthaiya (Mysore State)**:** I want one clarification, Sir. As Dr. Ambedkar says if territorial waters, that is, land three miles beyond the coast-line, belongs to the Union, where is the necessity for this section at all ?

Mr. President: That is the question which he has answered.

Shri K. Hanumanthaiya : If the interpretation of Dr. Ambedkar holds good.

Mr. President: No more discussion about it. Dr. Ambedkar has said what he has to say. Members have to take it.

I shall now put the article to vote.

The question is :

"That the following new article be added, after article 271 :—

All lands, minerals and other things of value lying things of value lying within territorial Waters vest in the Union.	271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and he held for the purposes of the Union.

The motion was adopted.

Article 271-A was added to the Constitution.

ARTICLE 272

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in article 272, after the word and figure 'Part I' in the two places where they occur, the words and figures 'or Part III' he inserted."

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†Mr. President : Would you like to speak, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I think Mr. Munshi has clearly explained and I do not like to add anything to it. The amendment was adopted. Article 272, as amended, was added to the Constitution.

ARTICLE 273

‡Mr. President : We take up 273. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in clause (1) of article 273, after the word and figure 'Part I' the words and figures 'or Part III' be inserted.

That with reference to amendment No. 201 above, in clause (l)of article 273, after the word 'Governor' in the two places where it occurs, the words 'or the Ruler' be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word 'the Governor of a state' the words 'the Governor or the Ruler' be substituted."

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#The Honourable Dr. B. R. Ambedkar : Sir, my Honourable Friend Mr. Kamath had something to say about the use of the word "assurances", and I think his argument was that we were using the word "contracts" in one place and "assurances" in another. "Assurance" is a very old word in English conveyancing; it was used and is being used to cover all kinds of transfers and therefore the word "assurance" includes the word "contract". So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

Shri H. V. Kamath : My difficulty was about the language. The article starts with "all contracts" and then we have "all such contracts and all assurances of property", etc.

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*CAD, Vol. VIII, 15th Tune 1949, p. 893.

†*Ibid.,* 895.

‡*Ibid,* p. 895.

#*Ibid*., pp. 898-99.

The Honourable Dr. B. R. Ambedkar : If there is any difficulty about the language it will be looked into by the Drafting Committee. I was explaining the technical difference between assurance and contract.

Then Mr. Tyagi asked why a person should be freed of liability if lie signs a contract. I think much of the objection raised by Mr. Tyagi would fully disappear if he were made a member of the Cabinet: I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has no personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My Honourable Friend Mr. Tyagi does not know that there is a well established system in the Government of India whereby it is laid down that it is only a document or letter issued by an officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a man who is merely appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my friend Mr. Tyagi.

Mr. President : I will now put the various amendments to vote.

[All the three amendments by Dr. Ambedkar were accepted. Article 273, as amended, was added to the Constitution]

ARTICLE 274

***Mr. President :** Article 274 is now for discussion.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (1) of article 274, for the words 'Government of India', in the second place where they occur, the words 'Union of India' be substituted."

Sir, with your permission I will also move my other amendments to this article now. I move:

"That in sub-clause (a) of clause, (2) of article 274, for the words 'Government of India' the words 'Union of India' be substituted."

I move:

"That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

I move:

"That with reference to amendments Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words 'by the Legislature' the words 'of the Legislature' be substituted."

I move :

"That with reference to amendment No. 204 above, in clause {1) of article 274, after the words 'corresponding Provinces' the words 'or the corresponding Indian States' be inserted."

I move:

"That with reference to amendment No. 206 above, in sub-clause (2) of article 274—

(i) after the words 'a Province', the words 'or an Indian State' be inserted; and (ii) after the words 'the Province' the words 'or the Indian State' be inserted."

Shri Jaspat Roy Kapoor (United provinces : General) **:** I am not moving my amendments Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.'

†The Honourable Dr. B. R. Ambedkar : Sir, perhaps it might be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus :

"The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the tune being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the

*CAD, Vol. VIII, 15th June 1949, p. 900.

†*Ibid*., pp. 901-02.

corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) if at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India—"

that it is the new thing—

"shall he deemed to he substituted for the Dominion in those proceedings; and (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings."

Now this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be stated. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

Shri H. V. Kamath : The Government is not fleeting; the personnel of the government may be fleeting.

The Honourable Dr. B.R. Ambedkar : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity ; the Union of India is a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term "corresponding States" some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303 (1) (g), which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty—since the exact equivalent of an old Province or State is difficult to judge as there are bound to be some variations as to territory and so on—can be solved only by giving power to the President to determine which new particular State corresponds to which particular old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that sub-clause (2) suggests is this : that when any proceedings are pending, where the

entities to sue or be sued are different from what we are providing in sub-clause (1), the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1). With regard to the objection taken by my Honourable Friend, Mr. Santhanam that the words "enacted by virtue of powers conferred by this Constitution" as being superfluous, all I can say is I disagree with him and I think these are very necessary.

[All the amendments of Dr. Ambedkar were accepted and Article 274 was added to the Constitution]

ARTICLE 274-A

***The Honourable Dr. B. R. Ambedkar :** Sir, I would like this article to be held over.

Mr. President: Then there is a long amendment, a new part to be added by Mr. Sidhva.

Shri T. T. Krishnamachari : May I suggest that the House may take up Part XIII—the election chapter, article 289 and onwards as put in the Order Paper ?

Shri R. K. Sidhva : Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

The Honourable Dr. B. R. Ambedkar : This is to be held over.

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ARTICLE 289

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†**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I move :

"That for article 289, the following article be substituted :—

Superintendance, directions and control of elections to be vested in an election commission.

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall lie vested in a Commission Rreferred to in this Constitution as the Election Commission) to be appointed by the President.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commisssion.

*CAD, Vol. VIII, 15th June 1949, p. 903.

†*Ibid.,* pp. 904-07.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commisssioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

Mr. President: I have notice of a number of amendments, some in substitution of the articles 289,290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces : General) **:** May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved ? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is a great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a debate took place on this article,—it is quite likely that a debate would undoubtedly take place—there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my Honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

Pandit Hirday Nath Kunzru : I have read every line of it; I only want that the Honourable Member should treat the House with some respect.

The Honourable Dr. B. R. Ambedkar : The House will remember that in a very early stage in the proceedings of the Constituent Assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental rights. But the House affirmed without any kind of dissent that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day in pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental rights and put it in a separate part containing articles 289,290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1).

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or live members of the Election Commission who would continue in office throughout without any break, or to permit the President to have an *ad hoc*

body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the drafting committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner so that the skeleton machinery would always be available. Elections no doubt will generally take place at the end of five years; but there is this question namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralise the election machinery in the hands of a single Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But, this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds

which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the very root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, if I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commissioner shall not be liable to be removed except in the same manner as a Judge of the Supreme Court. If the object of this House is that all matters relating to elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat* We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judges of the Supreme Court. We, of course, do not propose to give the same status to the Other members of the Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election commission, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. It was felt that to allow the Election

Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other times it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow from the provincial Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission, no doubt administratively, it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original articles of the draft Constitution.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General): Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena, there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footing as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other Constitution which is better than the one we have provided for in the proviso to clause (4).

*CAD, Vol. VIII, 16th June 1949, pp. 928-30.

With regard to the other Commissioners the provision is that, while the power is left with the President to remove them, that power is subjected to a very important limitation, *viz.,* that in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provisions which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My provision—I must admit—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this House a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also he realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therfore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this

question because as I said it is going to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments, this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happpen. Therefore in order to meet the criticism of my Honourable Friend Prof. Saksena, supported by the criticism of my Honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is :

"That the words 'to be appointed by the President' at the end of clause (1) be deleted."

"In clause (2) in line 4, for the word 'appoint' substitute the word 'fix' after which insert the following :—

"The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President."

"The rest of the clause from the words 'when any other Election Commissioner is so appointed' etc., should be numbered clause (2a).

Shri M. Ananthasayanam Ayyangar (Madras : General)**:** Sir, on a point of order, new matter is being introduced which ought not to be allowed at this stage. Otherwise there will have to be another debate.

The Honourable Dr. B. R. Ambedkar : I hope the Chair will allow other members to offer there views.

Mr. President: In that case I think the best course would be to postpone consideration of this article.

The Honourable Dr. B. R. Ambedkar : These amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

Shri T. T. Krishnamachari (Madras : General)**:** I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

The Honourable Shri K. Santhanam (Madras : General) **:** I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

The Honourable Dr. B. R. Ambedkar : These amendments have been brought after consultation with the Drafting Committee.

* * * * *

***Mr. President:** Let the amendments be moved.

The Honourable Dr. B. R. Ambedkar : My next amendment is :

"That in the beginning of clause (4) the following words should be inserted :—

'subject to the provisions of any law made in this behalf by Parliament'."

The Honourable Shri K. Santhanam : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

Mr. President: I do not think any further discussion is necessary; let these be moved.

The Honourable Dr. B. R. Ambedkar: You cannot deal with a Constitution on technical points. Too many technicalities will destroy constitution-making.

Shri H. V. Kamath : Sir, you ruled some days ago that substantial amendments would be postponed.

Mr. President: If these are considered to be substantial amendments they will be held over. As there sems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

NEW ARTICLE 289-A

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted : —

No person to be inelligible for inclusion in, or to claim to be excluded from the electoral roll on grounds of religion, race, caste or sec.	289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion, race, caste, sex or any of them."

*CAD, Vol. VIII, 16th June 1949, p. 930.

†*Ibid.,* pp. 930-31.

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms State and that is the reason why I have brought forward this amendament.

Mr. President: Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed ?

The Honourable Dr. B. R. Ambedkar : No, Sir, not like mat. I have moved the amendment. I was only giving the reasons why I have brought it up.

I shall move the other amendment also for inserting new article 289-B, I move :

"That for amendment No. 3087 of the List of Amendments, the following be substituted :—

"That after article 289-A, the following new article be inserted :—

Elections to the House of the People and to the Legislative Assemblies of states to be on the basis of adult suffrage.

289-B. The elections to the House of the People and to the Legislative assembly of every State shall be on the basis of adult suffrage, that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."'

[Amendment was adopted. Article 289-B was added to the Constitution.]

* * * * *

ARTICLE 290

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for article 290, the following article be substituted :—

Power of Parliament to make provisions with respect to elections to Legislatures.

290. Subject to the provisions of this Constitution, Parliament may from time to time by law make Provisions with respect to ail matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

*CAD, Vol. VIII, 16th June 1949, p. 932.

Sir, with your permission I would also like to move the other amendment which amends this. I move :

"That with reference to amendment No. 123 of List I (Fifth Week) in the new article 290, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

* * * * *

***Mr. President:** I find that there is notice of an amendment by Prof. Shibban Lal Saksena to article 290. He was not here at the time the amendments were moved. Anyhow it is not an amendment of substantial character.

If Dr. Ambedkar does not want to say anything in reply I shall put the amendment to vote.

The Honourable Dr. B. R. Ambedkar : I have nothing to say, Sir.

[Abovementioned amendments of Dr. Ambedkar were adopted. Article 290, as amended was added to the Constitution.]

ARTICLE 291

†**The Honourable Dr. B. R. Ambedkar :** I move :

"That for article 291, the following article be substituted :—

Power of Legislature of a State to make provisions with respect to election to such Legislature.	291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing the due Constitution of such House or Houses."

Sir, with you permission I move also amendment No. 211 of List VI Fifth week.

The amendment runs thus :

"That with reference to amendment No. 128 of List I (Fifth Week) in the new article 291., after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

* * * * *

‡**The Honourable Dr. B. R. Ambedkar :** I think Mr. Kamath has not properly read or has not properly understood the two articles 290 and 291. While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which

*CAD, Vol. VIII, 16th June 1949, p. 933.

†*Ibid.,* p. 934.

‡*Ibid.,* p. 935.

Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing.

Shri A. Thanu Pillai (Travancore State)**:** When steps have to be taken according to the time schedule, is the local Legislature to wait and see what the Central Parliament does ?

The Honourable Dr. B. R. Ambedkar : Primarily it shall be the duty of the Parliament to make provision under 290. The obligation is squarely placed upon Parliament. It shall be the duty and the obligation of the Parliament to make provision by law for matters that are included in 290, In making provisions for matters which are specified in 290, if any matter has not been specifically and expressly provided for by Parliament, then 291 says that the State Legislature shall not be excluded from making any .provision which Parliament has failed to make with regard to any matter included in 290.

Shri A. Thannu Pillai: May I know from Dr. Ambedkar whether it would not be better for either the central Legislature or the Local Legislature to be charged with full responsibility in this matter so that elections may go on according to the time schedule ?

The Honourable Dr. B. R. Ambedkar : I do not-agree. There are matters which are essential and which Parliament might think should be provided for by itself. There are other matters which Parliament may think are of such local character and liable to variations from province to province that it would be better for Parliament to leave them to the Local Legislature. That is the reason for the distinction between 290 and 291.

[Amendments of Dr. Ambedkar were adopted. Article 291 as amended was added to the Constitution.]

ARTICLE 291—A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after article 291, the following new article be inserted :—

Bar to jurisdiction of courts in electoral matters.

Bar to jurisdiction of courts in electoral matters.

291 -A. Notwithstanding anything contained in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;

(b) no election to either I louse of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition

*CAD, Vol. VIII, 16th June 1949, p. 936.

presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature;

(c) provision may be made by or under any law made by the appropriate Legislature for the finality of proceedings relating to or in connection with any such election at any stage of such election."

Sir, I also move :

"That with reference to amendment No. 132 of List I (Fifth Week) in the new article 291-A, clause (c) be omitted."

[Article 291-A, as amended by Dr. Ambedkar's amendment was added to the Constitution.]

* * * * *

ARTICLE 297

***Shri H. V. Kamath :** Mr. President, Sir, I move :

"That in clause (2) of article 297, for the words 'if such members are found qualified for appointment on merit as compared with the members of other communities', the words 'provided that such appointment is made on ground only of merit as compared with the members of other communities' be substituted."

I think, Sir, that this is an amendment more or less of a drafting nature and I leave it to the cumulative wisdom of the Drafting Committee to consider it at the appropriate stage.

The Honourable Dr. B. R. Ambedkar : I do not see that it is of a drafting nature. However we shall consider it later on.

[Article 297 was added to the Constitution]

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ARTICLE 300

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That with reference to amendment No. 3186 of the List of Amendments clause (1) of article 300 after the word and figure 'Part I' the words and figure 'Part III' be inserted."

‡**Mr. President**: Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : No. Sir.

[Dr. Ambedkar's above amendment was adopted. Article 300, as amended, was added to the Constitution.]

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ARTICLE 301

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#**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in clause (3) of article 301 for the word 'Parliament' the words 'each House of Parliament' be substituted."

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*CAD, Vol. VIII, 16th June 1949, p. 937

†*Ibid.,* p. 942.

‡*Ibid., p.* 943.

#*Ibid.,* p. 945.

[Article 301, as amended by Dr. Ambedkar's amendment was added to the Constitution]

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***Mr. President:** You are again assuming that it will be a session of the House.

Shri Jaspat Roy Kapoor: My submission were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a meeting.

The Honourable Dr. B. R. Ambedkar: The wording is "at a joint meeting" and not "silting".

Shri Jaspat Roy Kapoor: It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently....

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ARTICLE 289

†**Mr. President:** I will first put the amendment which Dr. Ambedkar has moved last.

The question is :

"That in amendment No. 99 of List I in the proposed article 289—

(i) in clause (1) the words 'to be appointed by the President' occurring at the end be deleted.

(ii) for clause (2), the following clauses be substituted :—

'(2) The election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, us the President may from time to time fix and die appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President."

'(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.'

(iii) in clause (4), before the words "The conditions of service' the words 'subject to the provisions of any law made by Parliament' be inserted."

The amendment was adopted.

[Six amendments by other members were negatived.]

[Article 289, as amended was added to the Constitution]

[The Assembly was adjourned until a date in July 1949 to be fixed by the President.]

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*CAD, Vol. VIII, 16th June 1949, p. 952.

†*Ibid.,* p. 958.

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SECTION SIX

Clausewise Discussion

30th July 1949 to 16th September 1949

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NEW ARTICLE 79-A

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) :* Sir, I move :

> That in amendment No. 1 of List I (First Week) of Amendments to Amendments,' for the proposal new article 79-A, the following be substituted :—
>
> Secretariat of Parliament "79-A. (I) Each House of Parliament shall have a separate Secretarial Staff:
>
> Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.
>
> (2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.
>
> (3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The House will see that this is a new article which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such a provision, ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President, the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far,

* CAD, Vol. IX, 30th July 1949, pp. 2-3.

therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, if was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative Department being apppointed to act as the secretary of the Legislative Assembly, with the result that that officer is under a sort of a dual control, control exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made *pro tempore* by the President in consultation with the Speaker of the House of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

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***The Honourable Dr. B. R. Ambedkar :** Sir, nothing that has been said, in my judgment, calls for a reply.

*CAD, Vol. IX, 30th July 1949, p. 9.

[All the 8 amendments were negatived. The motion of Dr. Ambedkar as shown above was adopted.]

New article 79-A was added to the constitution.

ARTICLE 104

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

That for article 104, the following article he substituted :—

Salaries etc of Judges

"104. There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Sir, all that I need say is that the present article is the same as the original article except that the word "privileges" has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

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†**Shri R. K. Sidhva :** .....Unless you amend the language of this Schedule in view of the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of this article moved by Dr. Ambedkar. I find that he has not made any reference to the Schedule and I do not know whether he is going to make any reference to the Schedule hereafter, because thai complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

‡**The Honourable Dr. B. R. Ambedkar :** Mr. Vice-president, Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Pandit Kunzru, and I tliink there are two valid objections which could be presented to the House for rejecting his amendment. In the

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* CAD, Vol. IX, dated 30th July 1949, p. 10

†*Ibid.,* p. 12.

‡*Ibid.,* pp. 12-13.

first place, as regards the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accured to him and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter. I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view, his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows pensions have a definite relation to salary and the number of years that a judge has served. To say, as my honourable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less than the pension to which each one of them would be entitled in pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court judge if he is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to salary between existing judges and new judges. The amendment, therefore, is premature. If the House accepts the proposition for which my honourable Friend, Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhwa: The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honourable Dr. B. R. Ambedkar : We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

[The amendment of Pandit Kunzru was negatived and the motion moved by Dr. Ambedkar as shown before was accepted. Article 104, as amended was added to the Constitution.]

NEW ARTICLE 148-A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

That after article 148, the following new article be inserted :—

Abolition or creation of Legislative Councils to States

"148A. (1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof."

As honourable members will see, this new article 148A provides for two contingencies : (i) for the abolition of the Second Chamber in those province which will have a Second Chamber at the commencement of the Constitution and (ii) for the creation of a Legislative Council in a province which at the commencement of the Constitution has decided not to have a Legislative Council but may subsequently decide to have one.

The provision of this article follow very closely the provisions contained in the Government of India Act, section 60, for the creation of the Legislative Council and section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of

* CAD, Vol. IX, dated 30th July 1949, pp. 13-14.

the Second Chamber or in the creation of a Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

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***The Honourable Dr. B. R. Ambedkar :** I do not think any reply is called for.

Mr. President : I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put it in two parts.

[3 Amendments were negatived, one was withdrawn and the motion of Dr. Ambedkar as mentioned above was adopted New article 148A was added to the Constitution.]

ARTICLE 150

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

That for article 150. the following be substituted :—

Composition of the Legislative Councils.

"150 (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed

twenty-five per cent of the total number of members in the Assembly of the State : Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualification entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe."

The original article was modelled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the original Draft related to the composition of the Upper Chamber at the Centre. For reasons, into which I need not go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain principle which has already been abandoned in the composition of the upper chamber for the Provinces. -That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now I must confess, that the Drafting Committee could not come to any definite conclusion

* CAD, Vol. IX, dated 30th July 1949, p. 20

†*Ibid.,* pp. 21-22.

as to the composition of the upper chamber. Consequently they decided—you might say that they merely decided to postpone the difficulty—to leave the matter to Parliament. At the present moment I do not think that the Drafting Committee could suggest any definite proposal for the adoption of the House, and therefore they have adopted what might be called the line of least resistance in proposing sub-clause (2) of article 150. That, as I said, also creates an anomaly, namely, that the Constitution prescribes that certain provinces shall have a second chamber, as is done in article 148-A, but leaves the matter of determining the composition of the second chamber to Parliament.

These are, of course, anomalies. For the moment there is no method of resolving those anomalies, and I therefore request the House to accept, for the present, the proposals of the Drafting Committee as embodied in article 150 which I have moved.

[Amendment No. 90 of List III (First Week) was not moved.]

Shri H. V. Kamath : Sir, I move :

> "That in amendment No. 5 of List I (First Week) of Amendments to Amendments, in clause (2) of the proposed article 150, for the words 'the qualifications to be possessed for being chosen' the words 'qualifications and disqualifications for membership of the Council' be substituted.'

The House will see that on a previous occasion with regard to the election of members to the legislature of a State they adopted various articles in the relevant parts. I would invite the attention of the House to article 167 for instance, which lays down the disqualifications for membership of the State Assembly in addition to the qualifications which have gone before. In providing for representation in the upper chamber and election of members to this Council I do not see why this House should not with equal validity, equal reason and equal force lay down not merely the qualifications of members to be chosen to the upper chamber but also what the disqualifications should be. Article 167 lays down how under various circumstances a member is to be disqualified for being chosen as or being a member of the Assembly or the Council of a State. Therefore I do not see any reason why the same thing should not be explicitly stated in article 150 moved by Dr. Ambedkar.

There is one other point about the article and that is this. The new amendment lays down that the strengthf of the Council shall not exceed one-fourth or 25 per cent of the total number of members in the lower

House. It also lays down further in a proviso, "Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty." How these two can be reconciled in particular cases passes my understanding. For instance, we have adopted article 148……

The Honourable Dr. B. R. Ambedkar : I would ask the honourable Member to read article 167 again.

Shri H. V. Kamath : I am talking of the next point.

The Honourable Dr. B. R. Ambedkar : What about the first point ? Do you favour it ?

Shri H. V. Kamath : I do not favour it. Dr. Ambedkar says that article 167 lays down the disqualifications…….

The Honourable Dr. B. R. Ambedkar : Both for the Assembly and the Council of States.

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***Mr. Naziruddin Ahmad** (West Bengal : Muslim) **:** ...This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

The Honourable Dr. B. R. Ambedkar : Sir, I rise on a point of Order. My Friend is criticisng a draft which is not before the House.

"Mr. Naziruddin Ahmad : I was trying to show how this unsatisfactory state of affairs in today's amendments arose.

The Honourable Dr. B. R. Ambedkar : It is not before the Members.

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†The Honourable Dr. B. R. Ambedkar : Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance. I believe, if I heard him correctly, that in the province of Orissa, the members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my

* CAD, Vol. IX, dated 30th July 1949, p. 27.

†*Ibid.,* pp. 35-37.

Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at tins stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Centre, namely a joint session. What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority of the Lower House. That I think, completely disposes of the first point of comment raised by my honourable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my honourable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why should you leave it to Parliament ? How can it be left to Parliament ? I think the answer that I can give to him, at any rate, so far as I am concerned, is quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a constructive proposal for the composition, of the Upper House in the Constitution itself. If my honourable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated from all

blame that might be attached to it by reason of not having made any effort to solve this difficulty ; they did try, but they did not succeed. My honourable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on this subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers of the various amendments to resile from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

Shri H. V. Kamath : Is Dr. Ambedkar sure that Parliament will be presented with less multiplicity ?

The Honourable Dr. B. R. Ambedkar : If my honourable Friend will give me time, I will reply to that part also.

My honourable Friend, Pandit Maitra, said : How is it conceivable that a part of the Constitution of so important an institution as the Upper Chamber could be left to be decided by Parliament and not be provided in the Constitution ? I think my honourable Friend, Pandit Maitra, will realize and I should like to point out to him quite definitely what we are doing with regard to the Lower House both in the Provinces or the States as well as at the Centre. If he will refer to article 149, which we have already passed, what we have done is we have merely stated that there shall be certain principles to govern the delimitation of constituencies, that a constituency is not to have less than so many and more than so many, but the actual work of delimiting the constituencies is left to Parliament itself and unless Parliament passes a law delimiting the various constituencies for the Lower House at the Centre, it will not be possible to constitute the Lower House.

Pandit Lakshmi Kanta Maitra : That is inevitable.

The Honourable Dr. B. R. Ambedkar : Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot

see any objection at all. Secondly, I feel personally that having regard to the conflicting view-points that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because Parliament then would be in a position to correspond with the various provincial Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via media* which might be put into law. Therefore, in putting forth this proposal, I think, we are not making any very serious departure from the principles we have already adopted and as my honourable Friend, Mr. T. T. Krishnamachari said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

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***Pandit Govind Malaviya** (United Pro vices : General)**:** I move, Sir, that the consideration of this article be held over.

Shri Brajeshwar Prasad : I beg to second this proposal.

The Honourable Dr. B. R. Ambedkar : I have no objection. We can have another go at it.

Mr. President : Then I take it that Members are agreed that this article should be held over.

Honourable Members : Yes.

NEW ARTICLE 163-A

†The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in amendment No. 12 of List 1 (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted :—

"163-A. (1) The House or each House of the Legislature of a State shall have a secretarial staff of State Legislatures separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of the House or House of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make

* CAD, Vol. IX, dated 30th July 1949, p. 37.

†*Ibid.,* n. 37.

rules regulating the recruitment and the conditions of service of persons appointed to the secretariat staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.'"

This article is merely a counterpart of article 79-A which we considered this morning.

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***Shri H. V. Kamath :** Mr. President, Sir……..In articles 79-A and 148-A, points of substance were made out by various amendments by my honourable Friend, Prof. Shibban Lai Saksena and myself. But when his turn came, Dr. Ambedkar was good enough, wise enough just to say that he did not wish to say anything.

The Honourable Dr. B. R. Ambedkar : I said no reply was called for.

Shri H. V. Kamath : That is left to his judgment. But, when certain substantial points are raised, they call for some sort of reply. Of course, he is buttressed, fortified by the fore-knowledge of the fact that when he says, 'yes' he will carry the House with him. It is of course upto him to decide what he will reply to and what he will not. But, the House is entitled to hear his view. If he is too tired, too fatigued, he may ask one of his wise colleagues…….

The Honourable Dr. B. R. Ambedkar: Who is to determine whether the points are points of substance ? If the President gave a ruling that the point is one of substance, I should certainly reply. I cannot leave the matter to be determined by Mr. Kamath himself.

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†Mr. President : Does any Member wish to say anything ?

(No Member rose to speak.)

Would Dr. Ambedkar like to say anything ?

The Honourable Dr. B. R. Ambedkar : No.

Mr. President : I will then put the amendments to vote.

[All 8 amendments were negatived. Article 163-A as moved by Dr. Ambedkar was put to vote and adopted. New Article 163-A was added to the Constitution.]

ARTICLE 175

‡Mr. President : Shall we take up 172 now ?

* CAD, Vol. IX, dated 30th July 1949, p. 38.

†*Ibid., p.* 40.

‡*Ibid.,* pp. 41-42.

The Honourable Dr. B. R. Ambedkar : We shall keep it back for the moment.

Mr. President : Shall we take up No. 175 ?

The Honourable Dr. B. R. Ambedkar : Yes.

Shri H. V. Kamath : What about 127-A ?

Mr. President : That will come up along with 210.

Let us take up new 175. There are some amendmednts to it.

(Amendments Nos. 16 and 17 were not moved.)

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir I beg to move that:

> '"That for the proviso to article 175 the following proviso he substituted :—
>
> 'Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.'"

Sir, this is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion therefore the new proviso deletes the word 'in his discretion'. Similarly it is felt that this right to return the Bill should not be extended to a money Bill and consequently the words 'if it is not a money Bill' are introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province is unicameral. It is a salutary provision and may be made use of in all cases even where the Legislature of a province is bicameral.

It is to make provision for these three changes that the new proviso is sought to be substituted for the old one, and I hope the House will accept it.

* CAD, Vol. IX, 30th July 1949. pp. 41-42.

Mr. President: I have notice of some amendments which are printed in the Supplementary List. Does any Member wish to move any of the amendments ? They are in the names of Shri Satish Chandra, Shri B. M. Gupte and Prof. Shibban Lal Saksena.

(The amendments were not moved.)

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***Mr. President :** We were dealing with article 175 day before yesterday before we rose. We shall now continue discussion on article 175....

Shri T. T. Krishnamachari (Madras : General) **:** Sir, may I submit that that article has very little to do with article 172. ...I suggest that article 175 be considered apart from 172.

Mr. President : Would it not be better if we were to dispose of 172 first?

Shri T. T. Krishnamachari : That is entirely to be decided at your discretion. We may take up 172 first and then have the vote on 175.

Mr. President : Do you have any objection ?

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** I have no objection. Sir, I am entirely in your hands.

Mr. President: Then we shall dispose of 172 first and then go to 175.

ARTICLE 172

†**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, I move :

"That for article 172, the following article be substituted:—

Restriction of powers of Legislative Council us to Bill other than Money Bills.

'172. (1) If after a Bill has been passed by the Legislative Assembly of a State haying a Legislative Council and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed lo by the Legislative Council and then transmit the Bill as so passed lo the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

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* CAD, Vol. IX, 1st August 1049, p. 43.

†*Ibid.,* pp. 43-44.

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree ; the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments if any, as have been agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.'"

The House will remember that when we discussed the question of the resolution of the differences between the Council of States and the House of the People, we discussed the different methods by which such differences would be resolved, and we came to the conclusion that having regard to the Federal character of the Central Legislature it was proper that the differences between the two Houses should be resolved by a joint session of both the Houses called by the President for that purpose. It was at that time suggested that instead of adopting the procedure of a joint session we should adopt the procedure contained in the Parliament Act of 1911 under which the decision of the House of Commons with regard to any particular Bill, other than a Money Bill prevails in the final analysis when the House of Lords has failed to agree or refused to agreee, to the amendment suggested by the House of Commons after a certain period has elapsed. On a consideration of this matter, it was felt that the procedure laid down in the Parliament Act for the resolution of the differences between the two Houses of the Legislature was more appropriate for the resolution of difference between the two Houses set up in the Provinces. Consequently we have made a departure from the original article and introduce this new article embodying in it the proposal that the decision of the more popular House representing the people as a whole ought to prevail in case of a difference of opinion which the two Houses have not been able to reconcile by mutual agreement.

Sir, I move.

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***Pandit Hirday Nath Kunzru :** ...I think considering the changes that have been made by the Drafting Committee itself from time to time there is no principle on which it is proceeding. My honourable Friend Dr. Ambedkar says there is a very good principle.

Honourable Dr. B. R. Ambedkar : I say there is no principle.

Pandit Hirday Nath Kunzru : I am glad my honourable Friend admits that there is no principle underlying the amendment that he has suggested to the House.

* CAD, Vol. IX, date 1st August 1949, p. 52.

The Honourable Dr. B. R. Ambedkar : It is a matter of expediency and practicality.

Pandit Hirday Nath Kunzru : He admits it is a question of expediency and practicality....

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, as I listened to the debate, I find that there are some very specific questions which have been raised by the various speakers who have taken part in the debate. The first point was raised by my Friend Mr. Santhanam and I would like to dispose of that before I turn to the other points. Mr. Santhanam said that a provision ought to be made in clause (1) of the article to provide for a case where the Upper House has not passed the Bill in the form in which it was passed by the Assembly. I think that on further consideration, he will find that his suggestion is actually embodied in sub-clause(c), although that clause has been differently worded. We have as a matter of fact provided for three cases on the occurrence of which the Lower House will take jurisdiction to act on its own authority. The three cases are : firstly when the Bill is considered but rejected completely; secondly, when the Upper House is either sitting tight and taking no action or has taken action but has delayed beyond the time which is permitted to it for consideration of the Bill ; and thirdly, when they do not agree to pass the Bill in the same form in which it lias been passed by the Assembly, which practically means what my Friend Mr. Santhanam is suggesting. I therefore do not think there is any necessity to revise this part of the article. I might say incidentally that in devising the three categories or conditions on the occurrences of which the Lower House would have the power to act on its own authority, the words have more or less been taken closely from article 57 of the Australian Constitution.

Now, I come to the general points that have been raised. It seems to me in discussing this matter, there are three different questions that arise for consideration. The first question is how many journeys the Bill should undertake before the will of the Lower House becomes paramount. Should it be one journey, two journeys or more than two journeys ? That is one question. The second question is, what should be the period that should be allotted to the Upper House for each journey,

* CAD, Vol. IX, dated 30th July 1949, pp. 57-59.

both going and coming back ? The third question is, how is the period within which the Council is to act to be reckoned. To use the phraseology which is familiar to those who know the law of limitation, what is to be the starting point ? So far as the present amendment is concerned, it is proposed that the Bill should have two journeys. It goes in the first instance, it comes back and it goes again. It may be possible to argue that more journeys than two are to be permitted. As I said, this is a question of practical politics. We must see some end, or dead end, at which we must allow the authority of the Lower House to become paramount, and the Drafting Committee thought that two journeys were enough for the purpose to allow the Upper House to act as a revising Chamber.

Now, with regard to the time to be permitted, to the Upper House during these journeys to consider the Bill, the proposal of the Drafting Committee is two months. Now it may be three months, in the first case, as I am accepting the amendment moved by my Friend, Mr. T. T. Krishnamachari, and in the second case it would be one month.

My Friend Pandit Kunzru said that the Drafting Committee had no fixed mind, that it was changing from moment to moment, that it was fickle, and he referred to the original Draft set out in the Draft Constitution laying down six months. Here again, I should like to point out to him that the period lo be allowed to each House is not a matter of principle at all. It is a matter only of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact, it felt that even three months was too long a period. But it is quite conceivable that a Bill like the Zamindari Bill which has a large number of clauses, may emerge from the Lower House and may be sent to the Upper House for consideration. But for such exceptional cases, I think my Friend will agree that other measures would not, be of the same magnitude or the same substance. Consequently, we thought that three months was a reasonable period to allow to the Upper House in the case when the Bill goes on its first journey, because after all what is the Upper House going to do ? The Upper House in acting upon a Bill which has been sent to it by the Lower Chamber is not going to re-draft the whole thing ; it is not going to alter every clause. It is only certain clauses which it may feel of public importance that it would like to deal with, and I should have thought that for a limited legislative activity of that sort, three months in the first instance was a large enough period to allow to the Upper House and would not certainly curtail the

legitimate activity of a Second Chamber. In the second case, we felt that when the Lower House had more or less indicated to the Upper House what are the limits to which they can go in accepting the amendments suggested by the Upper House, one month for the second journey, was also quite enough. Therefore, as I said, there being no question of principle here but merely a question of practical politics, we thought that three months and one month were sufficient.

Now, I come to the last question, namely, what is to be the starting point of calculating the three months or the one month. I think Mr. Kunzru will forgive me for saying that he has failed to appreciate the importance of the changes made by the Drafting Committee. If this provision had not been there in Draft article 172 as it stands, I have no doubt—and the Drafting Committee had no doubt—that the powers of the Upper Chamber would have been completely negatived and nullified. Let me explain that; but before I do so, let me state the possibilities of determining what I call the starting point of limitation. First of all, it would have been possible to say that the Bill must be passed by the Upper House within a stated period from the passing of the Bill by the Lower House. Secondly, it would have been possible to say that the Upper House should pass the Bill in the stated period from the time of the reception of the Bill by that House. Now supposing we had adopted either of these two possibilities, the consequences would have been very disastrous to the Upper House. Once you remember that the summoning of the Upper House is entirely in the hands of the executive—which may summon when it likes and not summon when it does not like—it would have been quite possible for a dishonest executive to lake advantage of this clause by not calling the Upper House in session at all. Or supposing we had taken the reception as the starting point, they' could have also cheated the Upper House by not putting the Bill on the agenda and not thereby giving the Upper House an opportunity to consider it. We thought that this sort of procedure was wrong ; it would result in penalising the Upper House for no fault of that House. If the House is not called certainly it cannot consider the Bill, and such a Bill could not be deemed to have been considered by the Upper House. Therefore in order to protect the Upper House the Drafting Committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the reception of the Bill, a proposal which was embodied by them in the draft article as it stands. And they deliberately adopted the provisions contained in the

new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain ; certainly the Upper House cannot complain. My honourable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

Pandit Hirday Nath Kunzru : Does this childish explanation satisfy the honourable Member himself ?

The Honourable Dr. B. R. Ambedkar : If my honourable Friend chooses to call it childish he may do so, but I have no doubt that the new clause is a greater improvement than the clause as it stood. I am sorry if Pandit Kunzru is not satisfied, but he did not raise any point to which I have not given an explanation.

Mr. President : The question is :

"That in sub-clause (b) of clause (1) of the proposed article 172, for the words 'two months' the words 'three months be substituted."

The amendment was adopted.

Article 172, as proposed and amended, was added to the Constitution.

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ARTICLE 176

***Mr. President :** Then we go to article 176.

The Honourable Dr. B. R. Ambedkar : I suggest that it would be better if we take up 83-A and dispose it of.

Mr. President : I do not think there is much in article 176. We can take up now. There is hardly any amendment....

[Now there is no amendment to this article 176. Article 176 was adopted and added to the Constitution.]

ARTICLE 83-A

†Mr. President : Shall we go back now to article 83 ?

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move:

"That after article 83 the following new article be inserted :—

Decision on question as to disqualify canons of members.

'83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President his decision shall be final.

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* CAD, Vol. IX, dated 1st August 1949. p. 62

†*Ibid.,* p. 62.

(2) Before giving any decision on any such question, the President shall obtain opinion of the Election Commission and shall act according to such opinion.'"

This article is a replica, so to say, of article 167-A which we passed the other day which applies to similar cases in the provinces and I do not therefore think that any more explanation will be necessary.

[The New Article 83-A was adopted and added to the Constitution]

ARTICLE 127-A

***Mr. President :** I think we had better take up articles 210 and 211. Thereafter we shall come to article 127-A.

Shri T. T. Krishnamachari : Either way it does not matter because if this is accepted then article 210 and 211 get automatically dropped.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move:—

"That after article 127, the following new article be inserted:—

'127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State.'"

Audit reports relating to accounts of a State.

The House will remember, it has now adopted articles whereby the auditing and accounting will become one single institution, so to say, under the authority of the Comptroller and Auditor-General. It is, therefore, necessary that we should make some provision that the reports relating to the audit and accounts of a particular State shall be submitted to the Legislature by the Governor or the Ruler for its consideration and that is what this article provides for.

Mr. President: Does any one wish to say anything about this article ?

Honourable Members : No.

New article 127-A was added to the Constitution

ARTICLE 197

†Mr. President : Shall we take up article 212 ?

Shri T. T. Krishnamachari : Article 188 may be taken up ; it has got to be deleted.

The Honourable Dr. B. R. Ambedkar : I was suggesting that articles 188 and 278 may be taken together. It would be better if the whole thing is explained.

Mr. President : Then, we shall taken up article 197.

* CAD, Vol. IX, dated 1st August 1949, p. 63.

†*Ibid.,* p. 64.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 197, the following article be substituted:—

'197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such allowances and rights as are specified in the Second Schedule :

Salaries, etc of Judges.

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.'"

This section corresponds to the other article which related to the Supreme Court Judges.

Mr. President : There is an amendment by Pandit Kunzru.

[Amendments 20, 21 and 22 of List I (Second Week) were not moved.]

Mr. President : There is no amendment moved to this. 1 shall put to vote the article as moved by Dr. Ambedkar today.

The motion was adopted.

Article 197 as amended was added to the Constitution.

ARTICLE 212 to 214

***Mr. President :** Shall we take up article 212 ?

The Honourable Dr. B. R. Ambedkar : Sir, I would like articles 212 to 214 to he held over. I think article 275 may be taken up.

Shri L. Krishnaswami Bharathi (Madras : General) **:** Sir, article 212 to 214 are sought to be held over. I think the House would like to have an explanation as to why they are being held over.

The Honourable Dr. B. R. Ambedkar : The explanation is this : that we are having the prospect of some of the Settlements coming over to India like Chandernagore and other places. We have to make some provision for them, and this might be the appropriate place where provision for them might be made. It has been just suggested that it **is** felt that it might be more properly incorporated and so on, Consequently, we want some time to consider that question. Perhaps, we might be in a position to take up these articles even today.

Mr. President : Then, we may take up article 188, and in that connection, the other emergency provisions.

The Honourable Dr. B. R. Ambedkar: We might also take up article 275 which is also an emergency provision.

* CAD, Vol. IX, dated 1st August 1949, p. 65.

Mr. President : Let us take up article 275.

Mr. Naziruddin Ahmad : May I rise on a point of order, Sir ?

It is very inconvenient for some members to follow the procedure which is being adopted in the House. We have in the agenda paper today some articles which are set down *seriatim*. It was understood on the last occasion that articles will be taken up in the order laid down in the Order Paper. I do not wish to raise any technical objection ; but the difficulty is that Members have got to come prepared to intelligently take part in the debate. Instead of following a regular procedure even after the recess we had, the House is expected to jump from one article to another backwards and forwards. I submit this is causing some amount of inconvenience and I submit that the House should be asked to proceed in some regular order. Otherwise, there would be no intelligent debate.

Mr. President : I am inclined to agree with Mr. Naziruddin Ahmad that it is inconvenient to Members to jump from article 211 to 275.

The Honourable Dr. B. R. Ambedkar : I am prepared to take up article 212 and go on.

Mr. President : I think that is much better. If anything happens, we can provide for that later on regarding Chandernagore. Let us take up article 212.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 2713 of the List of Amendments, clause

(2) of article 212 be omitted."

The reason why this amendment is being moved is because all provisions with regard to the States specified in Part III are being made separately in a separate Schedule. Consequently it is unnecessary to retain clause (2) here.

I also move :

"That in clause (1) and the proviso to claue (1) of article 212. for the words 'Governor or Ruler', wherever they occur, the expression 'Government' be substituted."

Mr. President: We have quite a number of amendments to this article of which notice has been given. I shall take them one by one.

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[After discussion on various amendments Article 212 as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 213

The Honourable Dr. B. R. Ambedkar : Sir I move. :

"That with reference to amendment No. 2722 of the List of Amendments, for article 213, the following article be substituted :—

'213. (1) Notwithstanding anything contained in this Constitution Parliament may by law create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant Governor—

Creation or continuance of local Legislatures or Council of Advisers or Ministers.

(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State ; or

(b) a council of advisers or ministers or both with such constitution, powers and functions in each case, as may be specified in the law.

(2) Any law referred to in clause (1) of this article shall not be deemed to be au amendment of this Constitution for the purposes of article 304 thereof notwithstanding that it contains any provision which amends or has the effect of amending the Constitution."

Sir, the principal change sought to be effected by this amendment is this. In the original Draft the power of creating a body, whether nominated or elected, for purposes of representation and a Council of Advisers or Ministers was a matter which was left to the President. The new Draft gives the power to Parliament and not to the President. That is the only substantial change which has been effected by this new article. Otherwise the provision remains the same.

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†**The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, Sir, with regard to the amendment moved by my Friend Lala Deshbandhu Gupta, I am quite certain that this is not the place where the amendment properly come in. The amendment also raises a question of principle, namely, that it provides for a weightage in representation to certain areas. Now, the House will remember that at one stage, this question of weightage in representation was debated at considerable length and the House accepted the principle that weightage should not be allowed. However, I might say that by reason of article 67 where certain principles of representation are laid down, it might be possible that if some territories of India are unable to obtain even a single representative by reason of the rule, we will have to make some special provision. We cannot allow by reason of a mathematical rule to deprive any territory of representation in the State. In that connection, this matter

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* CAD, Vol. IX, dated 1st August 1949, p. 73.

†*Ibid*., dated 2nd August 1949, pp. 100-01.

may have to he considered, and I can say at this stage that when such areas are brought into existence, and the Drafting Committee is called upon to make some provisions with regard to their representation, then the whole matter might be examined and a fresh article, something after article 67, say article 67-A, might be incorporated. Beyond that, I cannot at this stage, say anything more.

Mr. President : I will put the amendment to vote now.

[Article 213, as amended by Prof. Shibban Lal Saksena's ammendment was adopted and added to the Constitution.]

ARTICLE 213-A

***Mr. President :** Then we go to article 213-A.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 213, the following new article be inserted:—

'213 (1) Parliament may by law constitute a High Court for a State for the time being specified in Part II of the First Scheduled or declare any Court in such State to be a High Court for the purposes of this Constitution.

High Courts for states in Part II of the First Schedule.

(2) The Provisions of Chapter VII of Part VI of this Constitution shall apply in relation to every High Court referred to in clause (1) of this article as they apply in relation to a High Court referred to in article 191 of this Constitution subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State for the time being specified in Part II of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State for the time being specified in Part I or Part III of the First Schedule to, or from, any State for the time being specified in Part II of that Schedule or any area included within that State."

Sir, it will be remembered that when the House discussed the constitution of States in Part I, it was decided that every State should have a High Court. States in Part II are also States ; consequently the provision which applies to States in Part I, namely, that each State should have an independent High Court, must also apply to States in Part II. Unfortunately, this provision had not been made in the Draft as it stands now. Consequently it has become necessary to introduce this article 213-A in order to provide that even in States included in

* CAD, Vol. IX, dated 2nd August 1949, p. 102.

Part II there shall be a High Court, or if there is a High Court that High Court shall be treated as a High Court. Provision is also made in clause (8) of this article that if there is no High Court and if it is not possible to create a High Court exclusively for any particular area included in States in Part II, it will be open for Parliament to declare that a certain other Court situated in any adjacent area may be treated as a High Court for purposes of that particular area. That is the purpose of this article.

Mr. President: There is no amendment to this article. Does anyone wish to say anything on it ? Then I shall put it to vote.

The question is :

"That new article 213-A stand part of the Constitution."

The motion was adopted.

Article 213-A. was added to the Constitution.

ARTICLE 214

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***Mr. President :** Then we will take up amendment No. 52 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That with reference to amendment No. 2728 of the List of Amendments, for article 214, the following article be substituted :—

'214. (1) Until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.

(2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in this behalf by the President by order, continue unchanged.'"

There is nothing new in this article except that the two parts in this are separate while they were lumped together in the original article.

(Article 214, was added to the Constitution)

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ARTICLE 275

†**Mr. President :** Then we go to article 275. Amendment No. 111. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 275, the following article be substituted :—

'275. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

Proclamation of Emergency.

* CAD, Vol. IX, dated 2nd August 1949, p. 103.

†*Ibid.,* pp. 103-04.

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as 'a Proclamation of Emergency')—

(a) may be revoked by a subsequent Proclamation ;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."

This article is virtually the old article 275 as it stands in the Draft Constitution. The changes which are made by this amendment are very few. The first change that is made is in clause (1). The original words were "war or domestic violence". The present clause as amended would read as "war or external aggression, or internal disturbance." It was thought that it was much better to use these words rather than the word "domestic violence" because it may exclude external aggression, which is not actually war, or less than war.

The second change that is introduced is in sub-clause (c) of clause (2). Originally it was provided that the Proclamation shall cease to operate at the expiration of six months. It is now proposed that it should cease to operate at the expiration of two months. Six months was felt to be too long a period.

The proviso is also a new one and it provides for a case where the Proclamation is issued when the House of the People is dissolved or the Proclamation is issued during the dissolution. The provision contained in the new proviso is that if the Proclamation is issued when the House has been dissolved, or between the dissolution of the old House and the election of the new House, then the new House may ratify it within thirty days.

The last clause is self-explanatory and it merely provides what I think is the intention of clause (1) that even though there is not the actual

occurrence, if the President thinks that there is an imminent danger of it, he can act under the provisions of this article.

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***Shri T. T. Krishnamachari :** ...Therefore, I say that most of the points that have been raised against these provisions are pointless because the powers of the Parliament are preserved and all that I wanted to convey by intervening in the debate was to say that nobody will be happy that he has to put the provision in this Constitution, but at the same time we would be failing in our duty if we do not put provisions in the Constitution which will enable those people who have the control of the destinies of the country in future times to safeguard the Constitution, so that people were in this House and elsewhere will understand that these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the executive to safeguard the Constitution. Sir, I support the amendment moved by the Honourable Dr. Ambedkar.

Shri H. V. Kamath : May I tell my honourable Friend, Mr. T. T. Krishnamachari that the point T made out with reference to article 48 of the Weimer Constitution is that Hitler used those very provisions to establish his dictatorship.

Mr. President : Dr. Ambedkar may like to speak.

The Honourable Dr. B. R. Ambedkar : I do not know ; so much time has been taken up in the debate. If the Members who have taken part in the debute desire that I should say something, I should be glad to do so and even then it can only be done tomorrow.

Mr. President: I think that Mr. T. T. Krishnamachari has dealt with all the points that have been raised and it may not be necessary for you to reply to the points which have been raised by the Members.

Pandit Thakur Das Bhargava : We do not require any other reply.

Mr. President: I do not think it shows any disrespect to the Members who have expressed their views if you do not reply, but if you want to reply, I cannot certainly prevent you from doing so. Would you take much time to reply ?

The Honourable Dr. B. R. Ambedkar : I would take some time. I thought that no reply was necessary because Mr. T. T. Krishnamachari has replied to the points already.

* CAD, Vol. IX, dated 2nd August 1949, pp. 125-26.

Prof. Shibban Lal Saksena : Let us hear him tomorrow. In any case we want to hear him.

Mr. President : I am only thinking of the time. I do not think any reply is particularly called for. I will put the amendments to vote now.

[All the 4 amendments were negatived and the Article 276 as moved by Dr. Ambedkar was adopted and added to the Constitution.]

ARTICLE 276

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***Mr. Naziruddin Ahmad** (West Bengal : Muslim) **:** May I point out that 3003 is a drafting amendment ? It merely transposes a few words from one place to another.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** If that is so, I agree.

(Amendments Nos. 3004 and 3005 were not moved.)

Mr. President : No. 3006 is not exactly of a drafting nature. 3006 is consequential to 3003. So, better move both.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

> "That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' he deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of clause (a) of the same article."

I also move:

> "That in clause (b) of article 276, the words 'notwithstanding that it is one which is not enumerated in the Union List' be added at the end".

(Amendment No. 119 of Supplementary List was not moved.)

Mr. President : There is no other amendment.

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†**Shri T. T. Krishnamachari** (Madras : General) **:** Mr. President, Sir, I am afraid .if my Friend Mr. Naziruddin Ahmad will look at section 126A of the Government of India Act, he will find why Dr. Ambedkar's amendment is necessary, because 276(b) gives executive power to the Union in times of emergency, when an emergency is declared, and these words are necessary in order to make the meaning perfectly clear. The tiling has been clarified, in terms of the language used in the Government of India Act, section 126A. If he will read the section once again, he will find that there is no objection to the inclusion of these words in this article.

* CAD, Vol. IX, date 3rd August 1949, p 129

†*Ibid.,* p. 130.

Mr. President : You do not wish to say anything. Dr. Ambedkar ?
The Honourable Dr. B. R. Ambedkar : No Sir. It is not necessary for me to say anything.

Mr. President : Then I will put the amendments to vote now.

[Dr. Ambedkar's amendment was adopted. Article 276, as amended was added to the Constitution.]

ARTICLES 188, 277-A, 278 AND 278-A

***Mr. President :** Then we come to article 277.

The Honourable Dr. B. R. Ambedkar : I would like to hold article 277 back, for the present.

Mr. President : Shall we then take up article 277-A 7 Article 277 is held back for the present and we take up article 277-A now.

The Honourable Dr. B. R. Ambedkar : Sir, I think it would be better if the three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278-A because they are cognate matters. They might be put separately for voting purposes. But for discussion, I think they might be taken together.

Mr. President : Articles 188, 278 and 278-A may be taken together because they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That article 188 he deleted."

Sir, I move:

"That after article 277, the following new article be inserted :—

Duty of the Union to protect state against external aggression and internal disturbance.

'277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution'."

And then, Sir, I move amendment No. 160 of List II, which reads as follows:

"That for article 278, the following articles be substituted : —

Provisions in case of failure Constitutional machinery in State.

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or

*CAD, Vol. IX, dated 3rd August 1949, pp. 130-35.

Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State ;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in "whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to asssume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuence in force of such a Proclamation is passed by both Houses of Parliament Proclamation shall unless revoked continue in forces for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years ;

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said Period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

"278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India ;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State."

Shri H. V. Kamath (C.P. and Berar : General) **:** Article 188 also ?

The Honourable Dr. B. R. Ambedkar : I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir, I anticipate that there will be probably a full-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that mighty be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the Province feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is. now felt that no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the provincial field in order to sustain the constitution embodied in this Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted.

Now I come to article 277-A. Some people might think that article 277-A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation, which the Constitution imposes upon the Centre. The invasion must not be an invasion which

is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law there is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It will be an act in fulfilment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278. Clause (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word "otherwise" was not there. Now it is felt that in view of the fact that article 277-A, which precedes

article 278, imposes a duty and an obligations upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty, to the report made by the Governor of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that his intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks he ought to act in the fulfilment of his duty.

The second change which article 278 makes is this : that originally the authority and powers of the legislature were exerecisable only by Parliament. It is now provided that this authority may be exerecisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and *de facto* possession of legislative powers of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made is this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered. The twelve months is now divided into two periods of six months each and after the first ratification, the

Proclamation could run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament, so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (I) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear—which probably was already implicit in the article—that the President also can exercise his powers conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.

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***Mr. President :** I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If honourable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

Several Honourable Members : The question be put, the question be put.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, although these articles have given rise to a debate which has lasted for nearly five hours, I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word "and" should be substituted by the word "or". I do not think that that is necessary because the word "and" in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, "and" or "or", as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278 because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes

* CAD, Vol. IX, dated 4th August 1949, p. 175.

these powers under sub-clause (a), that power of dissolving the legislature and holding a new election will be automatically transferred to the President—which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary of view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in article 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons

other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in accordance with the law of the province. All that happens under -article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would he totally different. There will he no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component words of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

Pandit Hirday Nath Kunzru (United Provinces : General) **:** May I ask my honourable Friend to make one point clear ? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

The Honourable Dr. B. R. Ambedkar : No, no. The Centre is not given that authority.

Pandit Hirday Nath Kunzru : Or only when there is such mis-government in the province as to endanger the public peace ?

The Honourable Dr. B. R. Ambedkar : Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Centre to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of "the provisions of the Constitution" taken as a whole ? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase 'in accordance with the provisions of the Constitution.'

The Honourable Dr. B. R. Ambedkar : It would take me very long now to got into a detailed examination of the whole thing and, referring to each article, say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression "failure of machinery", I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning. I do not think any further explanation is necessary.

Shri H. V. Kamath (C. P. & Berar : General)**:** What about the other amendments moved by Professor Saksena and myself? Is not Dr. Ambedkar replying to them ?

The Honourable Dr. B. R. Ambedkar : I do not accept them. I was only replying or referring to those amendments which I thought had any substance in them. I cannot go on discussing every amendment moved.

Shri H. V. Kamath : Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

Mr. President : I cannot force Dr. Ambedkar to reply in any particular way. He is entitled to give his reply in his own way.

The Honourale Dr. B. R. Ambedkar : In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper tiling we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these

two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kamath : Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

The Honourable Dr. B. R. Ambedkar : I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

Mr. President : I will now put the amendment to vote one after another.

The question is :

"The article 188 be deleted."

The motion was adopted.

Article 188 was deleted from the Constitution.

ARTICLE 279

***The Honourable Dr. B. R. Ambedkar :** Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Centre and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honourable Dr. B. R. Ambedkar : Suspension comes in another article. This article merely says that power may be exercised by the State—meaning both Parliament as well as the provinces—notwithstanding whatever is said in article 13.

* CAD, Vol. IX, dated 4th August 1949, p. 185.

Prof. Shibban Lal Saksena : During emergency ?

The Honourable Dr. B. R. Ambedkar : Yes. Because that is a normal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article 280, was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

Mr. President : I will put the amendments to vote.

[3 amendments were negatived. Article 279 was added to the Constitution.]

ARTICLE 280

***Mr. President :** Then we take up article 280.

Amendment No. 3028—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for the existing article 280, the following article be substituted :—

'280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order.'"

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus,* writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased

* CAD, Vol. IX, date 4th August 1949, p. 186.

to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

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***The Honourable Dr. B. R. Ambedkar :** May I say a word ? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the other articles.

Mr. President : This article may be held over.

Then we shall go to article 247.

ARTICLE 247

†The Honourable Dr. B. R. Ambedkar : Sir, I move that—

"That for the heading to the articles commencing with article 247, the following heading be substituted :—

'General'"

Mr. President : I do not suppose any discussion of that is required. The question is :

"That for the heading to the articles commencing with article 247, the following heading be substituted :—

'General'"

The motion was adopted.

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Mr. President : Does anyone wish to speak ?

The Honourable Dr. B. R. Ambedkar : All that I need say is that those words are included by way of 'abundant caution'. It may be they may be unnecessary, but it may be they may be found necessary. We want to retain those words.

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Article 247 was added to the Constitution.

ARTICLE 248

‡Mr. President : Then we take up article 248.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

Taxes not to be imposed save by authority of Law.

"That for article 248, the following articles be substituted :—

"248. No tax shall be levied or collected except by authority of law.

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* CAD, Vol. IX, dated 4th August 1949, p. 198.

† *Ibid.* pp. 198-99.

‡ *Ibid.,* p. 199.

Consolidated Fund.

248-A. (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State."

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

These amendments are only consequential to what we have already accepted previously.

[The Article as amended by the above amendment was adopted and added to the Constitution.]

ARTICLE 249

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***Mr. President :** Any one else who wishes to speak ? (No Member rose.)

Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** There is nothing to be said.

Mr. President : I shall now put the amendments to vote.

The question is :

"That in clause (2) of article 249, the words 'in that year' be deleted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (1) of article 249, after the words 'such stamp duties' the words 'as are imposed under any law made by Parliament' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (2) of article 249, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 249, as amended, stand part of the Constitution."

The motion was adopted.

(Article 249 as amended, was added to the Constitution.)

ARTICLE 250

†Mr. President : The motion is :

"That article 250, form part of the Constitution."

(Amendments Nos. 2842 to 2850 were not moved.)

Shri R. K. Sidhva (C. P. & Berar: General)**:** Mr. President, I move :

"That at the end of article 250, the following be added :

"The net proceeds of said distribution shall be assigned by the States to the local authorities in the jurisdiction'."

* CAD, Vol. IX, dated 4th August 1949, p. 208.

† *Ibid.,* p. 209.

[Mr. Sidhwa moved another amendment which was followed by his speech.]

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***The Honourable Dr. B. R. Ambedkar :** I am very sorry, Sir. I should have requested you at the very outset to allow this article to stand over.

Mr. President : It is suggested that this article be held over.

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ARTICLE 251

†The Honourable Dr. R. R. Ambedkar : Sir, I beg to move :

"That in clause (2) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

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‡The Honourable Dr. B. R. Ambedkar : Sir, I can explain the tiling now. Before I do that, I will take up the other amendments.

There is an amendment by Mr. Barman and there is another amendment by Prof. Saksena. I am sorry to say that I cannot accept either of the amendments.

This question whether the percentage of revenue collected by way of Income-tax should be prescribed in the Constitution itself either as sixty per cent, or any other percentage or should be left to the President to decide is a matter over which considerable thought has been bestowed both by the Central Government as well as by the provincial Governments in the Conference which took place the other day to discuss this matter. It was agreed that the best thing would be to leave the matter to be prescribed by the President and that no proportion should be fixed in the Constitution itself.

With regard to the other question raised by Prof. Sakesna, that instead of the word "prescribed", the wording should be "prescribed by Parliament", again I am sorry to say that I cannot accept the amendment. Our schemes is to allow the President to prescribe the proportion in the first instance by himself and in the second instance after a consideration of the recommendations of the Finance Commission. We do not propose to bring the Parliament in. Because, in that case, there would be a great deal of wrangle between the representatives of the different provinces and great injustice may be done by reason of the fact that certain provinces may have a very large majority in the Parliament and certain other provinces may have a small representation. Consequently, to leave the matter to Parliament practically means leaving it to the voice of those provinces who happen to have a larger

* CAD, Vol. IX, dated 5th August 1949, p. 209.

†*Ibid.,* p. 211.

‡*Ibid,* pp. 221-23.

representation at the Centre, and that I think would cut at the root of the justice which you want to be done to the various provinces.

Now, Sir, coming to the difficulty that you have raised, the words "States within which that tax is leviable in that year" are necessary.

They occur in the Government of India Act, 1935. The reason why these words were then introduced was because Income-tax was not to be levied in the Indian States which were to come within the Indian Union. In lieu of the Income-tax, the Indian States were required to make certain contributions, therefore, if the tax was not to be levied in that State, that State would not be entitled to obtain a share. We do not know what is going to be the procedure under the present Constitution. This matter is being examined by a Committee which has been appointed to investigate into the finances of the Indian States. If the recommendation of that Committee is that Income-tax should be leviable in all the States whether they originally constituted Indian Provinces or Indian States, then naturally these words would have to be altered. While moving this article, I retain liberty to the Drafting Committee to suggest to some amendment in that respect when the report of that Committee comes before us. That is the reason why these words are here.

Mr. President : Just one thing more. May I take it that it is not intended to cover cases within what used to be British India ?

The Honourable Dr. B. R. Ambedkar : No, no ; States in Part III.

Shri B. Das : Dr. Ambedkar has referred to decisions of a Conference of Prime Ministers of Provinces and the Drafting Committee. Tins House has no knowledge of what passed between them and what the result of their discussions is. Unless a Minute of those discussions is laid on the table of the House in the form of a note or otherwise, we are not in a position to come to any conclusion as to the action of the Drafting Committee.

Mr. Pesident : I take it, if there had been any question raised by any of the Premiers of the Provinces, they would be here to raise them if they did not agree with the draft. Therefore I take the draft as now placed before the House has the concurrence or the consent of the Premiers.

Shri B. Das : The House is not bound by what the Premiers and Finance Ministers did outside this House. If any decision was taken, it is the privilege and prerogative of this House to have copies of those documents.

Mr. President : No one is bound here by any decision taken by the Premiers and the Drafting Committee. The House is free to cast its vote in any way it likes.

Pandit Lakshmi Kanta Maitra : I would like to ask for clarification from Dr. Ambedkar on one point. The point is this. This article provides that the revenue shall be distributed among the States in such a manner and from such time as may be prescribed. ... Will the interim allocation be decided on the recommendations of the Finance Committee ? It is not clear as to what is going to happen with regard to the period immediately following the coming into operation of the Constitution, and before the appointment of the Commission envisaged in a subsequent period.

***The Honourable Dr. B. R. Ambedkar :** Sir, the explanation is very simple. If we wanted that there should be no interim enquiry before the President made an order of allocation, we would have merely said that such allocation as existed before the commencement of the Constitution shall continue until they are re-determined by the President on the recommendation of the Commission. We have not said that, and we have not said that deliberately, because we want that an enquiry should be made and on the basis of the enquiry the President may prescribe by order. That is the reason for the difference in language.

Pandit Lakshmi Kanta Maitra : That is to say, the interim Commission will be appointed straightaway now and on the recommendation of that Commission the President will prescribe by order ?

The Honourable Dr. B. R. Ambedkar : Yes. Otherwise we would have merely said that the existing allocation will continue until the President isued the new order.

Mr. President : I will now put the various amendments to vote. I will first put amendment No. 2858, moved by Shri Upendra Nath Barman.

Shri Upendra Nath Barman : Sir, in view of the statement of Dr. B. R. Ambedkar, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put amendment No. 76, moved by Dr. Ambeddkar. That is a verbal amendment.

The question is :

> "That in clause (2) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Then there is the amendment of Shri T.T. Krishnamachari.

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* CAD, Vol. IX. date 5th August 1949, pp. 222-23.

The question is :

"That in sub-clause (c) of clause (4) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

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[Prof. Saksena's amendment was negatived.]

Article 251, as amended, was added to the Constitution.

ARTICLE 253

***Mr. President :** Then we take up article 253.

(Amendments Nos. 2883 and 2884 were not moved.)

Mr. President : What about amendment No. 2885 ? Do you wish to move it, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : No ; Mr. Tyagi will move Ins amendment.

(Amendments Nos. 2886 to 2896 were not moved.)

Mr. President : Do you move, your amendment No. 2897, Mr. Bardoloi ?

The Honourable Shri Gopinath Bardoloi (Assam : General) **:** I do not want to move the amendment, but I would like to speak on the article.

(Amendments Nos. 2898 to 2902 were not moved.)

Shri Mahavir Tyagi (United Proivinces : General) **:** Sir, I had an amendment.

Mr. President : I have not finished all the amendments. I am taking them in order and will come to your amendment later. Amendment No. 81.

The Honourable Dr. B. R. Ambedkar : Sir I move :

"That in clause (2) of article 253. for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. President : Then amendment No. 214, in the name of Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I move:

"That with reference to amendment No. 2886 of the List of Amendments, clause (1) of article 253 he deleted."

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†Mr. President : Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : Sir, I am prepared to accept the amendment moved by Mr. Tyagi, and I think it is necessary that

* CAD, Vol. IX, dated 5th August 1949, p. 224.

†*Ibid.,* pp. 238-39.

I should offer some explanation on behalf of the Drafting Committee as to why it has proposed to accept this amendment.

Before I begin with the main points, which justify the acceptance of the amendment. I should like to meet the point of criticism which has been levelled against the Drafting Committee by my Friend Professor Saksena.

Professor Saksena said that it was not proper for the Drafting Committee to have originally put clause (1) in the article and now be ready to accept the amendment moved by Mr. Tyagi. I should like to state that clause (1) which the Drafting Committee put, does not have its origin in the deliberations of the Drafting Committee itself. That clause was suggested, if I remember correctly, in the report of the Union Powers Committee where a decision was taken that there should be no imposition of any salt duty. As the Drafting Committee was bound by the directions and the principles contained in the report of the Union Powers Committee, they had no option except to incorporate that suggestion in the article which deals with this matter. Therefore, there is really no question of vacillation, so to say, on the part of the Drafting Committee.

I now come to the practical difficulties that are likely to arise if that clause was retained. It will be recalled that in List I, we have two entries, entry 86 which permits the levy of excise by the Central Government, we have also entry 85 which permits the levy of a duty of customs. Now, if sub-clause (1) of article 253 remained as part of the Constitution, it is obvious that the Central Government would not be entitled to employ either entry 86 or entry 85 for the purpose of levying an excise or custom on salt. That is quite clear, because clause (1) takes away legislative power with respect to salt duty which was otherwise levied by entry 86, or entry 85. Now, it was represented that while the non-employment of the powers given under entry 86 to levy excise may not cause much difficulty to the country, the embargo, if I may say so, on the utilisation of the powers given under entry 85 to levy a customs duty may cause a great deal of difficulty, because (hat would permit the importation of foreign salt to be brought into India without the Government of India being in a position to apply any kind of legislative remedy to stop such influx of salt which may practically destroy the Indian salt industry. It was, therefore, felt that the better thing would be to remove the embargo and to leave the matter to the future Parliament, to act in accordance with circumstances that might arise at any particular

moment. That is the reason why the Drafting Committee is prepared to accept the amendment of my Friend Mr. Tyagi.

Shri R. K. Sidhva : May I know why the item of prohibition was entered in the directive policy ? If clause (1) of this article is to be deleted, may I know why the item regarding prohibition was inserted in the Directive Principles of the Government, and may I also know why the wearing of Kirpans was also put in the Fundamental Rights ?

The Honourable Dr. B. R. Ambedkar : Oh, Kirpans stand on quite a different footing.

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***Several Honourable Members :** No speeches now.

Mr. President: Let there be no speeches. If the Members so desire, I may allow the article to be held over for further consideration.

The Honourable Shri K. Santhanam : The article may be held over.

The Honourable Dr. B. R. Ambedkar : The article may beheld over.

Shri Mahavir Tyagi : The article may be held over.

Mr. President : This article will stand over.

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ARTICLE 253 (*Contd.*)

† **Mr. President :** We shall take up consideration of article 254, to begin with.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, before we begin discussion of article 254,1 would request you to allow consideration of Mr. Tyagi's amendment to article 253, because the Prime Minister wishes to speak on it. Although the debate is closed, I would request you to allow the Prime Minister to make a speech, before you put the amendment to vote.

Mr. President : Yes. Honourable Pandit Jawaharlal Nehru.

* * * * *

[Article 253, as amended, by Dr. Ambedkar's amendment was added to the Constitution.]

ARTICLE 254

‡**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I move :

"That for article 254, the following be substituted :—

254. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute-products to these States such sums as may be prescribed by the President.

Grants in lieu of export duty on Jute and Jute products

* CAD, Vol. IX, dated 5th August 1949, p. 240.

†*Ibid.,* dated 8th August 1949, p. 241.

‡*Ibid.,* dated 8th August 1949, pp. 242-43.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as export duty on jute or jute-products continues to be levied by the Government of India or until the expiration of ten years, whichever is earlier.

(3) In this article, the expression 'prescribed' 'has the same meaning as in article 251 of this Constitution."

Sir, this amendment makes an important change in the existing system of sharing the export duty on jute and jute-products. Under the Government of India Act, it was provided that certain provinces which are mentioned in this article should be entitled to a certain share in the proceeds of the export duty on jute and jute-products for the reason the jute forms a very important commodity in the economy of the provinces mentioned in this article. The proposal in the amended article is to do away with this right of certain provinces to claim a share in the export duty on jute and jute-products. The reason, if I may say so, is a very simple one. Ordinarily all export and import duties belong to the Central Government and no province has any right to a share in the export duty levied on any particular commodity which, as I said, happens to form an important commodity in the economy of that particular province. In view of the fact, however, that the finances of Bengal, particularly, could not be balanced without a share in the export duty, an exception was made in the Government of India Act, 1935, whereby the Bengal Government and the other Governments were given vested rights, so to say, to claim a share in the export duty which, as I said, was contrary to the general principle that the export and import duties belong to the Central Government. It is now felt that this exception which was made in the Government of India Act, 1935, should not be allowed to be continued hereafter. The reason why it is felt that this vicious principle should be stopped right now is that it is perfectly possible to imagine that other provinces also who have certain commodities grown in their area and exported outside on which the Government of India collects an export duty may also lay claim to a share in the export duty on those products. If that tendency develops it would be a very difficult position for the Government of India. Consequently it has been decided that that principle should now definitely be abrogated.' But it is equally clear that if that principle of sharing in the export duty was withdrawn suddenly it might create a difficulty in balancing the budgets of the several provinces which were

up to now dependent upon a share in the export duty. Therefore a provision is made that instead of giving specifically a share in the export duty an equivalent sum or such other amount as the President might determine may be made over or assigned to those provinces for the period the export duty continues to be levied or until the expiration often years, whichever is earlier. The latter is introduced in order to enable those provinces to get sufficient time to develop their resources so that after the period mentioned in this article they would be in a position to balance their budgets.

I hope, Sir, the salutary principle which is now embodied in this amended article 254 will be acceptable to the House.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, Sir, in my reply to the debate, I do not propose to go over the many tales of woe that have been sung in this House by Members from different provinces who feel that they have been badly treated in the distribution of revenues that has been ordered under the Government of India Act, 1935. I just propose to take the few more concerete points to reply to.

First of All, I propose to say a word with regard to the amendment moved by my Friend, Professor Shibban Lai Saksena. He wants that the grants, instead of being fixed by the President, should be fixed by Parliament. Now, in the course of the debate on other financial articles that took place last time, I said that it was not the intention to bring Parliament in the matter of the distribution, because we do not want that the distribution of revenue should become a subject matter either of log-rolling between different provinces or wrangling between the representatives of different provinces. We want this matter to be decided by the President or by the President on the advice of the Finance Commission. That is the reason why I am not prepared to accept Professor Saksena's amendment.

Then I come to the point raised by my Friend, Mr. Maitra. His first argument was that he saw no reason why the Drafting Committee should now bring forth an amendment so as to change the original article. I am sure he forgot to refer to the recommendations of. the Expert Committee on Finance. If he will refer to that, I think that he will agree with me that it was the Expert Committee who recommended that the

* CAD, Vol. IX, dated 8th August 1949, pp. 259-61.

system of allocation of the jute duty and the duty on jute-products should be altered. It was therefore not a matter of any volition or wish on the part of the Drafting Committee to effect a change in the original article.

Pandit Lakshmi Kanta Maitra: They referred to compensation also.

The Honourable Dr. B. R. Ambedkar: I will come to that. The only tiling which the Drafting Committee did not accept was the allocation suggested by the Expert Committee on Finance, to be given to the different provinces which would be losing their share in the export duty on jute. It was felt by the Drafting Committee that probably the figures suggested by the Expert Committee required further examination. Having regard to the very short time that was at the disposal of the Expert Committee the Drafting Committee did not feel sure that the figures suggested by the Expert Committee could be accepted by them without further examination. It was because of that fear that the Drafting Committee, instead of adopting the figures suggested by the Expert Committee, adopted their own formula which now finds a place in the new article, viz. that the grants-in-aid in lieu of compensation for the loss of the jute duty shall be prescribed by the President. There is therefore, no desire on the part of the Drafting Committee either to take away a legitimate source of revenue from the four provinces which have been mentioned in this particular article, in which, so to say, they have a vested right, nor has the Drafting Committee attempted to make any fundamental alterations in the figures suggested by the Expert Committee. All that they have done is to leave the matter to the President.

Now, my Friend, Pandit Hirday Nath Kunzru, pointed out that the Drafting Committee was wrong in inserting a definition of the word "prescribe" in the article now before the House. He went further to say that even in the last article which we passed, which is 260, the word "prescribed" ought not to be there. Now, it seems to me somewhat difficult, whatever may be the merits of the proposition that he has urged, to avoide the definition of the word "prescribed". We have said in the main part of article 254 that the grants-in-aid shall be such as may be prescribed. Now, any lawyer would want to know what the word "prescribed" means. Either we would have to have a special definition of the word "prescribed" which would be confined to or circumscribed by the provisions of article 254 or we would have to alter the provisions contained in article 260 where the word "prescribed" has been defined.

Mr. President : Probably you refer to 251.

The Honourable Dr. B. R. Ambedkar: I am sorry. I stand corrected. It is 251. It seems to me that so far as prescription of allocation is concerned, the Drafting Committee has suggested two different definitions of the word "prescribed". One definition of" prescribed "means prescribed by the President when there is no report before him of the Finance Commission and the second definition of "prescribed" is prescribed when the President has got before him the recommendations of the Finance Commission. The reason why the Drafting Committee has been required to give two different definitions of interpretations of the word "prescribed" is this. It is quite clear that the Provinces want that the existing allocation not merely of the jute duty but the allocation of other sources of revenue provided under other articles of the Constitution must not be the same as are now existing, because their complaint is that the amounts now given to them are neither adequate nor just and that some revision of the allocation is necessary. Obviously, if the allocation is to take place immediately so that the new allocation would commence on the commencement of the Constitution, it is obvious that such allocation can be made only by the President without waiting for the recommendations of the Finance Commission because it is inconceivable that no matter what amount of hurry the Central Government was prepared for, it will not be possible to appoint a Commission to have its report, before the Constitution commences. Consequently, we had to devise this double definition of the word "prescribed". In the first place the prescription will be by the President without the recommendation of the Finance Commission. That, of course, does not mean that the President will act arbitrarily. That does not mean that the President would act merely on the advice of his Cabinet, which might be interested in safeguarding and securing the position of the Centre *vis-a-vis* the Provinces. It is, I think, in the contemplation of the Central Government and I should like to make that matter quite clear that the Central Government does propose to appoint some Committee, which will be an Expert Committee or some expert officer, which would of course not be a Commission within the meaning of this Constitution, for going into the question and finding out whether the existing allocation, not merely of the jute duty and duty on jute-products, but other allocations of other sources of revenue require to

be so revised as to do justice between province and province and between the Centre and the provinces. Consequently, when the first order of the President would be issued, it would not be issued, as I said, arbitrarily by the President or merely on the advice of the Executive at the Centre, but he would have some independent, some expert opinion by which he would be guided. After that when the further question arises of revising the orders, the question that will arise is this, whether the President should act on the advice of Parliament or whether he should act on his own advice or whether he should act on the advice and recommendation of the Finance Commission which is to be appointed under the Constitution. As I said, there are three different alternatives which we could adopt. I know my honourable Friend, Pandit Kunzru with the best of motives, suggests that the President should act independently and not be guided by the recommendations of the Finance Commission. There is a section of opinion represented by my honourable Friend, Professor Saksena, that no allocation should be made by the President even upon the recommendation of the Finance Commission unless Parliament gives sanction to it. As I have said there are defects in both these positions. I do not think that it is right for the President, after having appointed a Commission to recommend the allocation, that he should altogether disregard the recommendations of that Commission, pursue his own point of view and make the allocation. That I think would be showing disrespect to the Commission. As I have said, the third alternative of leaving the matter to Parliament seems to me to be full of danger, involving provincial controversies, and provincial jealousies. Therefore, the Drafting Committee has adopted, if I may say so, the middle way, namely, that although the matter may be debated in Parliament, in the action taken by the President, he should be guided by the recommendations made by the Fiscal Commission and should not act arbitrarily. I hope the House will accept this. This is the most reasonable compromise of the three methods and it is the best way of dealing with this matter.

[The amendment of Dr. Ambedkar as mentioned earlier was adopted.]

Article 254 was added to the Constitution.

NEW ARTICLE 254-A

***Mr. President :** Then we shall take up 254-A.

Mr. Naziruddin Ahmad : I have a point of order. Sir, the point of order is that amendment No. 82 seeking to introduce a new article 254-A is entirely a new matter. We have already decided in the House that amendments to the Constitution should be presented by a certain date. We have presented our amendments. No further amendments to the Constitution could be allowed according to the rules. The only amendments which are admissible today would be amendments to the original amendments as well as amendments to regular amendments. I submit that the present amendment is not related to any amendment at all... It says that "after article 254 the following article be substituted". There is here no attempt or even a pretence of it being with reference to or related to or being in connection with any amendment. I submit, Sir, that this article cannot be inserted in this way.

The Honourable Dr. B. R. Ambedkar : No doubt the point raised by my honourable Friend is quite valid, but I submit that you have infinite discretion in this matter to allow any amendment if it is an amendment of importance.

Mr. President: I think on previous occasions also we have allowed new articles to be inserted and this is a new article which is sought to be inserted after article 254.

Shri T. T. Krishnamachari : When you have allowed the Drafting Committee to function, it will be its duty continually to examine the Draft Constitution and if they find that there is a lacuna, because of the fact that the Committee is in existence, it has got to take steps to till in this lacuna. The present amendment arises out of that necessity.

Mr. President: On previous occasions I have allowed fresh articles to be introduced, and this is a new article which is sought to be introduced after article 254 and so I allow this.

Dr. Ambedkar, you may move the amendment.

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* CAD, Vol. IX, dated 8th August 1949, pp. 261-64.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 254 the following article be inserted :—

Prior recommendation of President required to Bills affecting taxation in which States are interested.

254-A. (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression 'agricultural income' as defined for the purpose of the enactments relating to Indian Income-tax or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article the expression 'tax or duty in which Slates are interested' means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State ; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State."

Sir, I might mention one or two reasons why we felt that at the fag end, so to say, this new article be inserted in the Constitution. A similar provision exists in the Government of India Act. The Drafting Committee considered the matter. They did not think it necessary to incorporate and transfer that article into the new Constitution. However, when a Conference of Premiers was held, it was suggested that such an article would be useful and perhaps necessary, because, once an allocation has been made by Parliament between the provinces and the States, such an allocation should not be liable to be disturbed by any attempt made by any private member to bring in a Bill to make alteration in matters in which the provinces become interested by reason of the allocation. It is because of this that the Drafting Committee has now brought forth this amendment in order to give an assurance to the provinces that no change will be made in the system of allocation unless a Bill to that effect is recommended by the President.

Mr. President : There is no amendment to this article.

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Mr. President : Do you wish to speak, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not think any reply is necessary.

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Article 254-A was added to the Constitution.

ARTICLE 255

***Mr. President :** We go to article 255.

(Amendment No. 83 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in article 255, for the words 'revenues of India', wherever they occur, the words 'Consolidated Fund of India' be substituted.

"That in the first proviso to article 255, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted.

"That in clause (a) of the second proviso to article 255, for the words 'three years 'the words 'two years' be substituted."

The first two amendments are just formal.....

Mr. Naziruddin Ahmad : On a point of Order. No. 86 is entirely new and not related to anything. It is not a formal matter. It is a serious matter.

The Honourable Dr. B. R. Ambedkar : That is what I am trying to explain.

Mr. Naziruddin Ahmad : It is not an amendment to an amendment. It is an amendment to the Constitution.

The Honourable Dr. B. R. Ambedkar: I move it with the permission of the Chair.

Mr. Naziruddin Ahmad : I wanted Dr. Ambedkar to be forced to take the permission of the Chair to move it.

The Honourable Dr. B. R. Ambedkar : I have taken his permission. The President can give his permission before or after moving it.

This matter refers to grants and the provision in the original article itself is that an average of three years should be paid to Assam. It was represented to us that if the average of three years is taken, the Assam Government will get very little because in the first year they did not spend anything but if we took the average of two years, they would get more. It is to meet this difficulty that the Drafting Committee has introduced the words two years instead of three years.

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ARTICLE 255 *(Contd.)*

†**The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, Sir, I can at once say that I am prepared to accept the

* CAD, Vol. IX, dated 8th August 1949, pp. 264-65.

†*Ibid.,* dated 9th August 1949, pp. 293-94.

amendment moved by my Friend, Mr. Nichols Roy. The draft of this article does seem to give the impression that until Parliament determines each year what the grants are to be, the President will have no power to do so. That certainly is not the intention of the Drafting Committee. The Drafting Committee would like the President to exercise his powers of making grants under article 255 even before Parliament has made any determination of this matter. And in order to make this position quite clear, I am, as I said before, prered to accept the amendment moved by Mr. Nichols Roy. I would, however, at this stage, like to say that I have not yet had sufficient time to examine the exact language he has put in his amendment; and therefore, subject to the reservation that the Drafting Committee would have the liberty to change the language in order to suit the text as it stands in article 255, I am prepared to accept his amendment.

Mr. President : I will now put the amendments to vote.

[All the amendments of Dr. Ambedkar, as given above, were adopted.]

Mr. President : And then I put Rev. Nichols Roy's amendment. The question is :

"That in article 255,—

(a) after the words 'Parliament may by law provide 'the words 'or until Parliament thus provides, as may be prescribed by the President' be inserted ;

(b) after the words 'Parliament may determine' the words 'or until Parliament determines as the President may determine' be inserted ; and

(c) the following Explanation be added at the end of the article :—

"*Explanation.*—The word "prescribed "has the same meaning as in article 251 (4)(*b*)."

The amendment was adopted.

[Article 255, as amended, was added to the Constitution.]

ARTICLE 256

***Mr. President:** We now take up article 256. Amendment No. 2925 by Dr. Ambedkar, in Vol. II, of the printed list.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for clause (1) of article 256 the following-clause be substituted:—

'(1) Notwithstanding anything in article 217 of this Constitution, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district borad, local board or other local authority therein, in respect

* CAD, Vol. IX, dated 9th August 1949, p. 301.

of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.' "

Sir, it is proposed in a subsequent article to permit local authorities to levy certain taxes on professions, trades callings and employments up to a certain limit. It is feared that such a tax, if levied by the State, might be called in question on the ground that it amounts to a tax on income and being within the exclusive authority of the Centre. It is to prevent any such challenge to any law made for the purposes mentioned in sub-clause (1) that this provision has been deemed by the Drafting Committee to be very necessary, and accordingly I move this amendment.

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Mr. President : Then Nos. 89 and 90 in the name of Mr. P.D. Himatsingka. He is not moving them. No. 91 in the name of Dr. Ambedkar.

The Honourabe Dr. B. R. Ambedkar : Sir, I do not wish to move it.

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The Honourable Dr. B. R. Ambedkar : Sir, I do not think that any very detailed reply is called for. The position is simply this, that in every Constitution the taxing resources of a State are generally distributed between the Centre and the States. The question of distributing the resources between the States and the local authorities is left to be done by law made by the State, because the local authority is purely a creation of the State. It has no plenary jurisdiction ; it is created for certain purposes ; it can be wound up by the State if those purposes are not properly carried out. This article, which I am proposing, is really an exception to the general rule that there ought to be no provision in a Constitution dealing with the financial resources of what are called local authorities which are subordinate to the State. But having regard to the fact that there are at present certain local authorities and their administration is dependent upon certain taxes which they have been levying and although those taxes have been contrary to the spirit of the Income-tax law, the Drafting Committee, having taken into consideration the existing circumstances, is prepared to allow the existing state of affairs to continue. In fact exception was taken to the limit fixed by the Expert Committee which was Rs. 250. The proposal was that

* CAD, Vol. IX, dated 9th August 1949, p. 301.

it ought to be brought down to Rs. 150. The Drafting Committee on reconsideration decided that that need not be done and under the present state of affairs may be continued up to the limit and within the scope that it occupies today. I therefore say that this is a pure exception, and on principle I am definitely opposed to it and I am therefore not prepared to accept any amendment that may have been moved by any honourable Friend.

[Amendment of Dr. Ambedkar, as given earlier was adopted and the Article 256, as amended** was **added to the Constitution.]

ARTICLE 257

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That the words 'by law' be added at the end of article 257."

It is a little inadvertent omission.

Mr. President : There are two other amendments which do not arise after the amendment of Dr. Ambedkar.

The amendment as above was adopted.

Article 257 as amended, was added to the Constitution.

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ARTICLE 259

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in clause (1) of article 259, for the word 'Auditor-General' the words 'Comptroller and Auditor General' be substituted."

This is done in order to bring the same monenclature in article 259 which has been given to this officer in the previous article this Assembly has passed.

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The amendment was adopted.

Article 259, as amended, was added to the Constitution.

ARTICLE 260

‡**Mr. President :** Then we go to article 260.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for amendment No. 2943 of the List of Amendments the following be substituted : —

That for clause (1) of article 260, the following clause be substituted :—

'(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to the appointed by the President.' "

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* CAD, Vol. IX, dated 9th August 1949, p. 302.

†*Ibid.,* p. 302.

‡*Ibid,* p. 303.

Sir, the point of this amendment is this. Originally, as the article stood, it stated that the Commission shall be appointed at the end of five years. It is felt that it is necessary to permit the President to appoint the Commission much earlier and consequently we are now providing that it should be appointed within two years from the commencement of the Constitution.

Mr. President : You may move amendment No. 96 also.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

> "That in sub-clause (b) of clause (3) of article 260, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

This is a formal one.

Mr. President : There are amendments to this article, which have been printed in the Book.

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Pandit Hirday Nath Kunzru : ...This article shows that the framers of the Constitution feel that under the provisions of article.....

The Honourable Dr. B. R. Ambedkar : It has not been passed yet.

Pandit Hirday Nath Kunzru : That is why I am referring to it now otherwise there would have been no point in referring to it.

The Honourable Dr. B. R. Ambedkar : I have a right to withdraw it.

Pandit Hirday Nath Kunzru : Dr. Ambedkar says he has a right to withdraw it. I hope he will be wise enough to withdraw it.

The Honourable Dr. B. R. Ambedkar : No, it might be modified.

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***The Honourable Dr. B. R. Ambedkar :** Sir, the House must have realised that my honourable Friend Dr. Kunzru's amendment referred to clause (3) of article 260 where the functions of the Finance Commission are laid down. But, in order to understand the exact significance of the amendments he has moved, I personally feel that it is desirable to know the method of allocation of revenues already provided for in the two articles we have already passed, namely 251 and 253. It will be realised that the Draft Constitution separates the distribution and allocation of the income-tax from the distribution and allocation of central duties of excise. With regard to income-tax the distribution and allocation of the proceeds is a matter which is left to the President to decide. That will follow from reading article 251(2)

* CAD, Vol. IX, dated 9th August 1949, p. 311.

with clause (4) (b) (i) and (ii). On the other hand with regard to the distribution and allocation of the proceeds of the central duties of excise the matter is left entirely to be determined by law made by Parliament, which you will find set out cleanly in article 253.

As it is one O'clock I will continue my speech tomorrow.

The Assembly then adjourned till 9 of the clock on Wednesday, the 10th August 1949.

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ARTICLE 260 *(Contd.)*

***Mr. President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** At the close of yesterday's sitting, Sir, I was dealing with the argument advanced by my Friend Pandit Kunzru in support of his amendment. I began by saying that it was desirable to remind the House of the provision contained in article 251(2) and article 253 as a sort of background to enable honourable Members to follow what exactly Pandit Kunzru wanted by his amendment.

Now I would briefly summarise what I said yesterday. The position is that so far as income-tax is concerned, the distribution and allocation of the proceeds are left to the President to determine, while the distribution and allocation of the Central duties of excise are left to be determined by law made by Parliament.

The next point to bear in mind are the provisions contained in article 260 which deals with the Finance Commission. Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made by Parliament, but also with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the

* CAD, Vol. IX, dated 10th August 1949, pp. 313-15.

President may well consult the Finance Commission and act in accordance with or after taking into consideration the recommendations made by the Finance Commission, but any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the Finance Commission in varying the distribution of the income-tax between the provinces and the Centre and the allocation of the proceeds of the income-tax so set apart between the different provinces ? The draft amendment as I have moved provides that the President shall take into consideration the recommendations of the Finance Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his point of view that, if this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield to the recommendations of the Finance Commission or to the clamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Centre should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, *viz.,* supposing there was a clamour made by all the provinces, which is perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces ? If, on the other hand, there was a report of the Commission containing recommendations that the Centre should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands now and the amendment proposed is that according to Pandit Kunzru, the President should be

free to act in his discretion, while the draft as proposed by me says that he should act in his individual judgment which means……..

Pandit Hirday Nath Kunzru (United Provinces : General) **:** Will the honourable Member permit me to make my point clear, because I feel that he has probably not completely understood what I said ? May I make clear what I said in one or two sentences. Under clause (3) of article 260 the President may refer any matter he likes to the Finance Commission for its opinion. I do not, therefore, want to debar the President from consulting the Commission in any matter that he likes. All that I am objecting to is that the Finance Commission without any reference from the President, should have the power to say that the allocation of the net proceeds of the income-tax between the Centre and the provinces is not what it should be and that new percentages recommended by it should be fixed. This is all that I said yesterday.

The Honourable Dr. B. R. Ambedkar : That rather makes the situation far more complicated because I cannot see how the Finance Commission can make any recommendation unless the point has been specifically referred to it or included in the terms of reference.

Pandit Hirday Nath Kunzru : Under sub-clause (a) of clause (3) of article 260 the Commission may on its own initiative make recommendations on that subject. Let my Friend read the sub-clause to understand the meaning.

The Honourable Dr. B. R. Ambedkar : "any other matter referred to the Commission by the President in the interest of sound finance."

Pandit Hirday Nath Kunzru : That is (d). Will the honourable Member refer to article 260, the article which we are disucussing, with particular reference to the clause that I dealt with yesterday ? Sub-clause (a) of clause (3) of article 260 says—

> "It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them……"

That is the thing that I am objecting to. The power of the President under sub-clause (d) of clause (3) to refer any other matter that he likes to the Finance Commission will not be disturbed if my amendment is accepted.

The Honourable Dr. B. R. Ambedkar : I do not know. The position is quite clear whether the President is to be left in his complete discretion

to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a jutifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces winch may be clamouring for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

Mr. President : I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar.

[Dr. Ambedkar's amendment was adopted. Article 260, as amended, was added to the Constitution.]

ARTICLE 261

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in article 261, for the word 'Parliament' the words 'each House of Parliament' be substituted."

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†The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry I cannot accept the amendments moved to this article. It seems to me that the amendment are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so far leave the matter entirely with the President acting on the recommendations of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the recommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My submission is that that issue is now closed, we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the subsequent variations.

* CAD, Vol. IX, dated 10th August 1949, p. 315.

†*Ibid.,* Pp. 328-29.

Now, the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made by Parliament. The President cannot do it himself. Therefore the words "shall put before Parliament a memorandum stating the action that has been taken" merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my Friend, Prof. Shibban Lai Saksena will read article 261 in relation to the other articles that we have passed, he will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment therefore I think that his amendment is quite unnecessary.

Mr. President : I will now put the amendments to the vote.

[Articles 261, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 263

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That for article 263 the following be substituted :—

'263. (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

Custody of Consolidated Funds, the payment of moneys into and withdrawal of moneys from such funds.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State shall be regulated by rules made by the Governor of the State.' "

I do not think any explanation is necessary.

Pandit Hirday Nath Kunzru : Mr. President, I move :

"That in the amendment just moved by Dr. Ambedkar, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted ; and for the words 'such Fund', wherever they occur, the words 'such Funds' be substituted."

* CAD, Vol. IX, dated 10th August 1949, p. 330.

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

Mr. President : I take it that Dr. Ambedkar will accept Pandit Kunzru's amendment.

The Honourable Dr. B. R. Ambedkar : I accept the amendment.

Article 263, as amended, was added to the Constitution.

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ARTICLE 267

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in article 267—

(i) after the words 'Crown in India' the words 'or after such commencement in connection with the affairs of the Union or of a State' be inserted ;

(ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted ;

(iii) for the words 'revenues of a State' wherever they occur, the words 'Consolidated Fund of the State' be substituted ;

(iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted ; and

(v) for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted."

It is just consequential.

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The Honourable Dr. B. R. Ambedkar : Sir, I do not accept any amendment.

Mr. President : I put the amendments to vote.

[Dr. Ambedkar's amendment was adopted. All other amendments moved by Prof. S. L. Saksena, H. V. Kamath and Dr. P. S. Deshmukh were rejected. Article 267, as amended, was added to the Constitution]

ARTICLE 268

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†The Honourable Dr. B. R. Ambedkar : Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes,

* CAD, Vol. IX, dated 10th August 1949, pp. 330-34.

†*Ibid.,* pp. 339-40.

for borrowing is an executive act in one aspect of the case, but in this article it is not proposed that the power of the executive to borrow is to the unfettered by any law that is to be made by Parliament. This article specifically says that the borrowing power of the executive shall be subject to such limitations as Parliament may by law prescribe. If Parliament does not make a law, it is certainly the fault of Parliament and I should have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this matter and enact a law. Under the article 268 I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year. I therefore do not see what more is wanted by those who expressed their dissent from the provisions of article 268. It is of course a different matter for consideration whether we should have a further provision limiting the power of the Parliament to pledge the credit of the country. It seems to me that even that matter may be left to Parliament because it will be free for parliament to say that borrowing shall not be done on the pledging of certain resources of the country. I do not see how tins article prevents Parliament from putting upon itself the limitations with regard to the guarantees that may be given by Parliament for the ensurement of these loans or borrowings. I therefore think that from all points of view this article 268 as it stands is sufficient to cover all contingencies and I have no doubt about it that, as my friend Mr. Ananthasayanam Ayyangar said, we hope that Parliament will take this matter seriously and keep on enacting laws so as to limit the borrowing authority of the Union,—I go further and say that I not only hope but I expect that Parliament will discharge its duties under this article.

Shri H. V. Kamath : Would not Dr. Ambedkar agree to the deletion of the words, "if any" ?

The Honourable Dr. B. R. Ambedkar : I have been considering that, but I do not think that will improve matters, because the words are "as may from time to time".

Mr. President : I take it the amendment to substitute the words "Consolidated Fund of India" is accepted.

Article 268, as amended, was' added to the Constitution.

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ARTICLE 269

***Mr. President :** There are some amendments which are printed in the II Volume of the printed amendments on page 313. Then we shall take up amendment No. 107 by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (1) of article 269, the words and figures 'for the time being specified in Part I of the First Schedule', be omitted."

"That in clause (1) of article 269, for the words 'revenues of the State' the words 'Consolidated Fund of the State', be substituted."

"That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article 269, the following clause be substituted :—

'(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 26S of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.' "

The important change by my amendment No. 107 is that originally the Government of India was given a free hand in this matter ; now the action, of the Government of India is subject to such conditions as may be laid down by or under any law made by Parliament.

Sir, I move :

"That in clause (3) of article 269, the- words and figures 'for the time being specified in Part I or Part in of the First Schedule' be omitted."

The Honourable Dr. B. R. Ambedkar : I do not think. Sir, any reply is called for.

[Article 269, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution]

ARTICLES 5 AND 6

†Mr. President : We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together, I think, Dr. Ambedkar.

Prof. K. T. Shah : May I know what happens to the amendments in the Printed List 7 They have all been tabled as amendments to the

* CAD, Vol. IX, dated 10th August 1949, pp. 340-42.

†*Ibid.,* pp. 343-44.

original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

Mr. President: If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

Dr. P. S. Deshmukh : If the original draft is not moved, all the amendments tabled to that draft go by the wind.

Mr. President : We do not move the original draft, but it will be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List I.

The Honourable Dr. B. R. Ambedkar : Sir, May I give the references ? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List I. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T. T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List IV. In amendment No. 129, it should read "of the proposed article 5A" instead of "of the proposed article 5." It is a printing error. With these preliminary observations, so to say, I move my amendment:

"That for articles 5 and 6, the following articles be substituted :—

"5. At the date of commencement of this Constitution, every person who has his domicile the territory in India and—

Citizenship at the date of Commencement this Constitution.

(a) who was horn in the territory of India ; or
(b) either of whose parents was born in the territory of India ; or
(c)who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement.

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

Rights of citizenship of certain persons who have nugrated to India from Pakistan.

5-A. Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and

(ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

Rights of citizenship of certain migrants to Pakistan.

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947. migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (h) of article 5-A of this Constitution be deemed to have migrated to the territoty of India after the nineteenth day of July 1948.

Shri Jaspat Roy Kapoor (United Provinces : General) **:** This, you had said, would be moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : I have included it in the consolidated article as I am proposing to accept the amendment which will be moved by him.

Right of citizenship of certain persons of Indian origin residing outside India.

5-B. Notwithstanding anything contained in articles 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grand parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to he a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

Continuance of the rights of Citizenship.

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Parliament to regulate the right of citizenship by law.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Sir, I would reserve my remarks alter the amendments to my draft are moved by Mr. T. T. Krishnamachari and that will complete the thing.

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***Mr. President :** If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the oilier amendments may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

An Honourable Member : Question.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this article refers to citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved, the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads—

> "Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5

* CAD, Vol. IX, dated 10th August 1949, pp. 346-49.

and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by those who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are :

(1) Persons domiciled in India and bom in India : In other words, those who form the bulk of the population of India as defined by this Constitution ;

(2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore. Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long tune and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee proposes to bring within the ambit of this article are :

(3) Persons who are residents in India but who have migrated to Pakistan ;

(4) Persons resident in Pakistan and who have migrated to India ;

and

(5) Persons who or whose parents are born in India but are residing outside India.

These are the live categories of people who are covered by the provisions of this article. Now the first category of people *viz.,* persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article 5 clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

The second class of people to whom I referred, viz., persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be

a resident of India for five years. All these clauses are subject to a general limitation, *viz.,* that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class *viz.,* persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grandparents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these—

Those persons who have come to India from pakistan are divided into two categories—

(a) those who have come before the 19th day of July 1948, and

(b) Those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, *viz.,* he again will be required to make an application to an Officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date of the commencement of the Constitution are put into two categories—those who have come before 19th July 1948 and those who have come afterwards. In the case of those who have come before the 19th July 1948, citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left India for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

Shri B. M. Gupta (Bombay : General) **:** Was the permit system brought in on 19th July 1948 ?

The Honourable Dr. B. R. Ambedkar : Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that, on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits. Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

Mr. President : I think we shall take up the amendments tomorrow.

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***Mr. President** : I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members ; they are free to vote in favour of any amendment they like.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Mr. President. Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh, said that by the draft articles we had made our citizenship a very cheap one. I should have though that if he was aware of the rules which govern the law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries.

With regard to the point that has been made by my Friend Prof. K. T. Shah that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who deny citizenship to Indians resident there, I think that is a matter which might well be left for Parliament to decide in accordance with the circumstances as and when they may arise.

* CAD, Vol. IX, dated 12th August 1049, pp. 422-24.

The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan. With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam, particularly as voiced by my Friend Mr. Rohini Kumar Chaudhuri. If I understood him correctly, his contention was that these articles relating to immigrants from Pakistan to India have left the gates open both for Bengalis as well as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal proportions in that Province. I think. Sir, he has entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India.

If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been declared, automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who have entered Assam, whether they are Hindu Bengalees or whether they are Muslim, after the 19th July 1948, he will find that citizenship is not an automatic business at all. There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on the registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a *bona fide* motive of becoming a permanent citizen of India or whether he has come with any other purpose. Now, it seems to me that, having regard

to these three limiting conditions which are made applicable to persons who enter Assam after 19th July 1948, any fear such as the one which has been expressed by my Friend Mr. Rohini Kumar Chaudhuri that the flood-gates will be opened to swamp the Assamese people either by Bengalees or by Muslims, seems to me to be utterly unfounded. If he has any objection to those who have entered Bengal before 19th July 1948—in this ease on a showing that the man has resided in India, citizenship becomes automatic—no doubt that matter will be dealt with by Parliament under any law that may be made under article 6. If my friends from Assam will be able to convince Parliament that those who have entered Assam before 19th July 1948 should, for any reason that they may have in mind or they may like to put before Parliament, be disqualified, I have no doubt that Parliament will take that matter into consideration. Therefore, so far as the criticism of these articles relating to immigrants from Pakistan to Assam is concerned, I submit it is entirely unfounded.

Then I come to the criticism which has been levelled on the provisions which relate to immigrants from India to Pakistan, I think that those who have criticised these articles have again not clearly understood what exactly it is proposed to be done. I should like, therefore, to re-state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, any one who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition which we have enunciated. It is necessary to enunciate this proposition, because on the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. The origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India notwithstanding that they went to Pakistan, might, on the basis of the rule of International Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that any one who has gone to Pakistan after the 1st March—you all know that we have taken 1st March very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of International justice if we presumed that any man who, as a result of the disturbances

went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this : as my honourable Friend Shri N. Gopalaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of tempoary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my Friend, Mr. Gopalaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgement look very invidious, it would in my judgement look a breach of faith if we now said that we should not allow these people whom our-own Government, whether rightly or wrongly, allowed to come away from pakistan for the purpose of permanent residents here, to have this prividege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit

system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says tht these people who, as I said, are so small, who have come on the assurance of our own Government to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in the criticism that has been levelled against these articles and I hope the House will accept them as they are.

SECTION 291

of Government of India Act, 1935

(Amendment) Bill

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, I find from the speeches to which I have listened so far that there is a great deal of misunderstanding as to what this particular Bill, particularly clause 4 of it, proposes to do. I think it is desirable at the outset to tell the House what exactly is intended to be done by clause 4. In order to put the House in a proper frame of mind—if I may say so without meaning any offence—I should like to draw the attention of the House to the wording of Section 291 of the Government of India Act as it was in operation before it was adapted after the Independence Act. Now I shall read just a few lines of that Section 291.

> "In so fur as provision with respect to matters hereinafter mentioned is not made by this Act. His Majesty in Council (and I want to emphasise these words His Majesty in Council) may from time to time make provision with respect to those matters or any of them. etc.. etc."

The first tiling that I would like to draw the attention of the House is this that in clause 4 of this Bill the matters which are enumerated from (b) to (j) are exactly the matters which are enumerated in the old Section 291. Therefore, it has to be understood at the outset that this clause, clause 4, is not making any fundamental change in the provisions contained in the original Section 291. The matters for which the Governor-General is going to be given powers by the provisions of the new Sectiion 291, as embodied in this Bill, are the same which were given by the original Section 291 to His Majesty in Council. (An Honourable Member : No.) I hope that this will be now clear to everybody and I do not think there can be any doubt on it, for anyone who compares the different clauses in this Bill and in the original Section 291 will have all his doubts removed.

* CAD. Vol. IX, dated 18th August 1949, pp. 465-68.

The question, therefore, may be asked as to why is it that we are now, giving the power to the Governor-General. The difficulty, if I may say so, is this. Somehow when the Government of India Act, 1935, came to be adapted after the Independence Act, there was, in my judgment, at any rate, a slip that took place and that slip was this, that this power which originally vested in His Majesty in Council, logically speaking, ought to have been transferred to the Governor-General, because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council. But, unfortunately, as I said, what happened was this that in adapting this Section 291, the power which we are now giving to the Governor-General was given to the local Legislature, I will read that adapted Section 291. I ask my friends who have been agitating over this to read the section as adapted. This is how it reads :

> "In so far as provision with respect to matters herein mentioned is not made in this Act in relation lo any Povincial Legislature, provision may he made by Act of that Legislature with respect to those matters or any of them, etc.. etc."

It has now been discovered that that was an error, that really speaking, when the section was adapted at that stage, the Governor-General should have been endowed with those powers, because those powers under the provisions of Section 291 were vested in His Majesty in Council and not in any local legislature what we are doing by this Bill is merely to restore the old position as it existed under the unadapted Section 291. I, therefore, want to submit that any criticism which has been levelled by any Member of the Assembly that there was some kind of a deep-laid game in order to upset the constitution for political motives is absolutely unwarranted. All that we are trying to do is to correct a slip that had taken place then.

I come to the next point, namely, the addition of the words "the composition of the Chamber or Chambers of the legislature." I quite agree……*

Dr. P. S. Deshmukh : May I ask one question, Sir ? Does not the alteration of the words "in so far as provision with respect to matters hereinafter mentioned is not made by this Act", the ommission of these words and making of these provisions applicable to……..

The Honourable Dr. B. R. Ambedkar : That is what exactly I am explaining. As I said, the only difference that will now be found between the original article 291 as unadapted and the proposed new clause is this that it is proposed by this new article to give power to the Governor-General to alter the provisions with regard to the composition of the Legislature. I admit that that is a change.

*Dots indicate interruption.

Dr. P. S. Deshmukh : Which includes schedules 5 and 6.

The Honourable Dr. B. R. Ambedkar : Oh, yes ; that is quite true. I admit without any kind of reservation that that is a change which is being made. Now the question is why should we make that change. The reason why we have to make the change in order to give the Governor-General the power even to alter the composition is to be found in the situation in which we find ourselves. Honourable Members will remember that there has been a considerable shifting of the population on account of partition. The population of East Punjab is surely not in any stereotyped condition. Refugees are coming and going. On the 1st April the population numbered so much ; six months thereafter it may number something quite different from what it was then. Similarly with regard to West Bengal and many other provinces where refugees have been taken by the Government of India under their scheme of rehabilitation or the refugees themselves have voluntarily travelled from one area to another. Obviously you cannot allow the provisions contained in the Fifth and Sixth Schedules with regard to the numbers in the legislature to remain what they were when we know as a matter of fact that the population has lost all relation to the numbers then prescribed in the Schedules. It is therefore in order to take into account the shifting of the population that power is given to the Governor-General to alter even the Schedules winch deal with the composition of the legislature.

I hope my honourable Friends will now understand that in giving this additional power of making an order with regard to the composition of the Chamber or Chambers the intention is to permit the Governor-General to make an order which will bring the strength of the different legislatures in the provinces affected to suit the numbers in those provinces. There is no nefarious purpose.

Dr. P. S. Deshmukh : You had two full years to rectify this position.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am only explaining why these provisions are being introduced by this new clause.

I have said that the other provisions are merely reproductions of what is contained in the original Section 291. This power is not being taken for a wanton or an unnecessary purpose nor is it intended to be used for anything other than a *bona fide* purpose. Therefore having regard to these circumstances my submission is that clause 4 is a perfectly justifiable proposal, both from the point of view of conferring these powers, which originally vested in His Majesty in Council, to be vested

in the Governor-General who is his successor and to give him additional power to alter the composition, because the pattern of the numbers in the different provinces have changed from the 15th August 1947.I quite realise that there has been an error in the Statement of Objects and Reasons where unfortunately a particular reference has been made to West Bengal. I should like to assert that this clause has been intended as a general provision which may be used by the Governor-General for rectifying any of the matters with regard to any province, not particularly West Bengal; and I think that was against somehow a slip which ought not to have taken place. Members of the House have picked up that particular wording of that particular clause where a pointed reference has been made to West Bengal in order to charge the Government with *malafide,* with having some kind of a bad motive towards the legislature in West Bengal. As I said, it is nothing of the kind. These clauses are general; they may be used if a situation arises : which calls far their use in West Bengal. They may be used for my province of Bombay where probably today, at any rate, no such circumstance appears. Therefore from that unfortunate statement—if I may say so—no conclusion ought to be drawn that there is any kind of underhand dealing so far as this clause is concerned.

Shri Suresh Chandra Majumdar (West Bengal : General) **:** Is it not possible to drop the words "West Bengal" ?

The Honurable Dr. B. R. Ambedkar : I have been telling my honourable Friends that the Statement of Objects and Reasons is not a part of the Act and therefore there can be no amendment moved to the deletion of any word or clause or sentence in the Statement of Objects and Reasons. As soon as this Bill becomes an Act, that Statement of Objects and Reasons will be thrown into the dustbin. It is different from a Preamble and I want Members of the House to concentrate on the Preamble where there is no such reference to West Bengal. Therefore my submission is that there is really nothing to quarrel with in this particular clause. In the first place it restores the original provision as it existed in the Government of India Act, 1935, in its unadapted condition, and secondly it proposes to give power which it has become necessary to give because of the altered position in the provinces.

An Honourable Member : Sir, I move that the question be now put.

Shri H. V. Kamath : Sir, on a point of order, Dr. Ambedkar has raised fresh points which we wish to discuss and under rule 33 of our Rules you may hold that there has not been sufficient debate, and so refuse to accept this motion for closure.

Dr. P. S. Deshmukh : But Dr. Ambedkar is not the Minister in charge.

Mr. Vice-President : Yes, that is so ; and the Honourable Member Mr. Kamath has had ample opportunity to speak on this clause. I therefore accept the motion for closure.

The question is :

"That the question be now put."

The motion was adopted.

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ARTICLE 150 *(Contd.)*

***Mr. Vice-President :** (Shri V. T. Krishnamachari)**:** Today we begin with article 150. The House will remember that there was a debate on this article as it originally stood and after three amendments were moved, the article was recommitted to the Drafting Committee. Dr. Ambedkar has now given notice of a new article. I request him to move that article, amendment No. 1 of List I (Fourth Week).

Mr. Naziruddin Ahmad (West Bengal; Muslim)**:** Sir, I have a point of Order. Shall I move it just now or after the amendment is moved ?

Mr. Vice-President : You may move it just now.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, as I have been observing for some time that the Drafting Committee has been springing surprise after surprise on the Members. Every day new amendments of a sweeping character are being sent in by the Draftting Committee. They come in all of a sudden like Air Raids.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Where is the point of Order ?

Mr. Vice-President: May I remind the honourable Member that this amendment has been brought before the House by Dr. Ambedkar and the Drafting Committee in response to the desire universally expressed in the House. For this reason, I rule out this point of Order. I now ask Dr. Ambedkar to move his amendment.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move :

"That for article 150, the following be substituted:—

Composition of the Legislative Council.

150. (1) The total number of members in the Legislative Council of a .State having such a Council shall not exceed one-fourth of the total number of members in the Assembly of that State ;

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

* CAD, Vol. IX, dated 19th August 1949, pp. 473-74

(2) Until Parliament may by law otherwise provide, the composition of the Legislative Council of a State shall he as provided in, clause (3) of this article.

(3) Of the total number of members in the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district broads and such other local authorities as Parliament may by law specify ;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly ;

(e) the remainder shall be nominated by the Governor in the manner provided in clause (5) of this article.

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) of this article shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—

literature, science, art, co-operative movement and social services.'"

As you have said, Sir, this article in a different form was before the House last time. The article as it then stood, merely said that the composition of the Upper Chamber shall be as may be prescribed by law made by Parliament. The House thought that that was not the proper way of dealing with an important part of the constitutional structure of a provincial legislature, and that there shall be something concrete and specific in the matter of the constitution of the Upper Chamber. The President of the Constituent Assembly said that he shared the feelings of those Members of the House who took that view, and suggested that the matter may be further considered by the Drafting Committee with a view to presenting a draft which might be more acceptable to those Members who had taken that line of criticism. As honourable Members will see, the draft presented here is a compromise between the two points of view. This draft sets out in concrete terms

the composition of the Upper Chamber in the different provinces. The only thing it does is that it also provides that Parliament may by law alter at any time the composition laid down in this new article 150. I hope that this compromise will be acceptable to the House and that the House will be in a position to accept this amendment.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Mr. Vice-President, Sir, out of the amendments that have been moved, I am prepared to accept the amendments moved by Mr. Sarwate. I think he has spotted a real difficulty in the draft as it stands. The draft says—'University in the State'. It is quite obvious that there are many States with at present no university. All the same there are graduates from other Universities who are residing in mat State. It is certainly not the intention to take away the right of a graduate residing in a State to participate in the elections to the Upper Chamber merely because he does not happen to be a graduate of a University in that particular State. In order therefore to make the way clear for graduates residing in the particular Stale, I think this amendment is necessary and I propose to accept it. I would only say that the word 'habitually' is perhaps not necessary because residence as a qualification will be defined under the provisions of article 149 where we have the power to describe qualifications and disqualifications.

With regard to the other points of criticisms I do not know that those who have indulged in high-flown phraseology in denouncing this particular article have done any service either to themselves or to the House. This is a matter which has been debated more than once. Whether there should be a Second Chamber in the province or not was a matter which was debated and the proposition has been accepted that those provinces who want Second Chambers should be permitted to have them. I do not know that any good purpose is served by repeating the same arguments which were urged by those Members at the time when that matter was discussed.

With regard to the merits of the proposition which has been tabled before the House, I have not seen any single constructive suggestion on the part of any Member who has taken part in this debate as to what should be the alternative constitution of the Second Chamber. Here and

* CAD, Vol. IX, dated 19th August 1949, pp. 490-91.

there bits have been taken and denunciations have been indulged in to point out either that that is a useful provision or a dangerous provision. Well, I am prepared to say that this is a matter where there can be two opinions and I am not prepared to say that the opinion I hold or the opinion of the Drafting Committee is the only correct one in this matter. We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances.

Then there were two points that were made, one of them by my Friend Mr. Nagappa. He wanted that a provision should be made for there presentation of agricultural labour. I do not know that any such provision is necessary for the representation of agricultural labour in the Upper Chamber, because the Lower Chamber will be in my judgment having a very large representation of agricultural labour in view of the fact that the suffrage on which the Lower Chamber would be elected would be adult suffrage and I do not know…….

Shri S. Nagappa : If that is the case, all other sections also to whom you are giving will also get representation in the Lower Chamber.

The Honourable Dr. B. R. Ambedkar : They are provided for very different reasons but agricultural labour would be amply provided in the Lower Chamber.

My friend Shri Muniswami Pillai by an amendment raised the question that there should be special representation for the Scheduled Castes in the Upper Chamber. Now, I should like to point out to Mm that so far as the Drafting Committee is concerned, it is governed by the report of the Advisory Committee which dealt with this matter. In the report of the Advisory Committee which was placed before the House during August 1947 the following provision finds a place :—

> "(c) There shall be reservation of seats for the Muslims in the Lower House of the Central and Provincial Legislatures on the basis of their population."
>
> "3. (a) The section of Hindu community referred to as scheduled caste and defined in scheduled to the Government of India Act 1935 shall have the same rights and benefits which are herein provided for etc., etc., "which means that the representation to be guaranteed to the Scheduled Castes shall be guaranteed only in the Lower Houses of the Central and Provincial Legislatures. That being the decision of the Constitutent Assbmely, I do not think it is competent for the Drafting Committee to adopt any proposition which I do not want to injure anybody's feeling, that if any one was vociferously in favour of this decision, it was my Friend Mr. Muniswamy Pillay and I think he ought to be content with what he agreed to abide by then."

Mr. Vice-President : Dr. Ambedkar you have to formally withdraw amendment No. *2*.

The Honourable Dr. B. R. Ambedkar : Yes, I have to withdraw it. The amendment was, by leave of the Assembly, withdraw.

[6 amendments were negatived and five including the one by Dr. Ambedkar were withdrawn.]

* * * * *

***Mr. Vice-President :** I now put Mr. Sarwate's amendment to the House. The question is :

"That in sub-clause (b) of clause (3) of the proposed article 150, after words 'consisting of persons' the words 'resident in the State' be added, and for the words 'in the State' the words 'in the territory of India' be substituted."

The amendment was adopted.

[Article 150, as amended, was added to the Court.]

PART VIII-A

ARTICLE 215-A

†The Honourable Dr. B. R. Ambedkar : Sir, I move my amendment No. 6, List 1, Fourth Week.

"That after Part VIII, the following new Part be inserted : —

"PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215-A. In this Constitution—

(a) the expression 'scheduled areas' means the areas specified in Parts I to VII of Definitions the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph ;

(b) the expression 'tribal areas 'means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

Administration of scheduled and tribal areas.

215B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam. "

Sir, my amendment merely replaces the original articles 189 and 190. The only thing we are doing is that we are transferring the provisions contained in articles 189 and 190 to another and a separate part. It is because of the transposition that it has become necessary to re-number them in order to secure the necessary logical sequence of the new part. Barring minor changes, there are no changes of substance at all, in the new articles proposed by me—article 215 A and article 215B.

* * * * *

* CAD, Vol. IX, dated 19th August 1949, p. 492.

† *Ibid.,* pp. 492-93.

***The Honourable Dr. B. R. Ambedkar :** I do not think there is any necessity to offer any remarks in reply.

The motion was adopted.

[Part VIIIA and articles 215A and 215B were added to the Constitution]

ARTICLE 250

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :—

"That in sub-clause (c) of clause (1) of article 250, after the word 'railway' a comma and the word 'sea' be inserted."

Sir, I move my next amendment also.

"That in clause (2) of article 250, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. Naziruddin Ahmad : ...At present there is a Bill before the Legislature for charging estate duty. Here we are legislating for a long time. Therefore we should have both estate or succession duty.

The Honourable Dr. B. R. Ambedkar : Succession duty is covered by (a) which says 'Duties in respect of succession to property'. Why repeat that in (b) ?

Mr. Naziruddin Ahmad : The two might have been combined.

* * * * *

‡**Mr. Vice-President :** ...Anyway, does Dr. Ambedkar want to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not want to say anything.

Mr. Vice-President : I will not put the amendments to the House.

[Both the amendments of Dr. Ambedkar, mentioned above, were adopted. Other amendments were rejected. Article 250 as amended was added to the Constitution.]

ARTICLE 277

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added :—

'(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament.'"

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between provinces and the Centre may be

* CAD, Vol. IX, dated 19th August 1949, p. 495.

† *Ibid.,* pp. 499-500.

‡*Ibid.,* p. 504.

modified by the President by order during the period of the emergency. It was felt that it was not proper to give the President this absolute and unrestricted power to modify the financial arrangements between the Provinces and the States and that the Parliament should also have a say in the matter. Consequently it is now proposed to add clause (2) to article 277 whereby it is provided that any order made by the President varying the arrangements shall be laid before each House of Parliament. It follows that after the matter is placed before the Parliament. Parliament will take such action as it deems proper, which the President will be bound to carry out.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. Vice-President, Sir, I have given as close an attention as it is possible to give to the amendment moved by my honourable Friend Pandit Kunzru, and I am sorry to say that I do not see eye to eye with him, because I feel that in a large measure his amendment seems to be quite unnecessary.

Let us begin by having an idea as to what financial relations between the Centre and the provinces are normally going to be, I think it is clear from the articles which have already been passed that the provinces will be drawing upon the Centre in the normal course of things :

(1) proceeds of income-tax under article 251 ;

(2) a share of the central excise duties under article 253 ; and

(3) certain grants and subventions under article 255.

I am not speaking of the jute duty because it stands on a separate footing and has been statutorily guaranteed.

Let us also have an idea as to what the article as proposed by me proposes to do. What the article proposes to do is this, that it should be open to the President when an emergency has been proclaimed to have the power to reallocate the proceeds of the income-tax, the excise duties and the grants which the Centre would be making under the provisions of article 255. The article, as proposed by me, gives the President discretion to modify the allocations under these three heads. That is the position of the draft article as presented to the House by the Drafting Committee.

Now, what does my Friend Pandit Kunzru propose to do by his amendment ? If I have understood him correctly, he does not differ from the Drafting Committee in leaving with the President complete discretion to modify two of the three items to winch I have made reference, that

* CAD, Vol. IX, dated 20th August 1949, pp. 520-23.

is to say, he is prepared to leave with the President full and complete discretion to modify any allocation made to the provinces by the Centre out of the proceeds of the excise duty and the grants made by the Centre under article 255. If I understood him correctly, he would have no difficulty if the President, by order, completely wiped off any share that the Centre was bound to give in normal times to the provinces out of the proceeds of the excise duties and the grants made by the Centre.

Pandit Hirday Nath Kunzru (United Provinces : General) **:** I never said any such thing.

The Honourable Dr. B. R. Ambedkar : Your amendment is limited only to the income-tax. That is what I am trying to point out. You do not by your amendment, in any way suggest that there should be any different method of dealing with the proceeds of the excise duties or the grants made by the Centre under article 255.

Pandit Hirday Nath Kunzru : The reason why I cast my amendment in that form is this. In so far as the distribution of the proceeds of any taxes depends on a statute passed by Parliament that power cannot be taken away from Parliament but it does not belong to the President. But so far as income-tax is concerned, the Government of India Act, 1935, envisaged the transfer of the full share of the provinces to them within a certain period and allowed the Governor-General, in case there was an emergency, to delay the transfer to the provinces and thus lengthen the total period in which the provinces were to get their full share. That was the only reason ; the inference drawn by my honourable Friend is completely unjustified.

The Honourable Dr. B. R. Ambedkar : I am entitled to draw the most natural inference from the amendment as tabled.

Pandit Hirday Nath Kunzru : The Honourable Member is completely misunderstanding me. Under my amendment the President will have no power to alter the distribution of the proceeds of the Union excise duties.

The Honourable Dr. B. R. Ambedkar : I am sorry the honourable Member did not make the matter clear in his amendment. And if he wants to put a new construction now and make a fundamental change the amendment should have been such as to give me perfect notice as to what was intended. There is nothing in the amendment to suggest that the honourable Member wants to alter the provisions of articles 253 and 255. It may be an after thought but I cannot deal with after thoughts ; I have to deal with the amendment as it is tabled. Therefore, as I read the amendment, my construction is very natural.

Pandit Hirday Nath Kunzru : The honourable Member is utterly unjustified.

The Honourable Dr. B. R. Ambedkar : That is the honourable Member's opinion. My reading is that something new is being put forward now.

Pandit Hirday Nath Kunzru : The honourable Member is misrepresenting me and knows that he is doing so.

The Honourable Dr. B. R. Ambedkar : The Honourable Member is misrepresenting his own thoughts. Therefore, as I understand it, there is no question of my honourable Friend suggesting any alteration in the system of modifying the proceeds of the excise duty and the grant. The only question that he raised is the question of the modification of the allocation of income-tax during an emergency. Even so what do I find ? If I again read his amendment correctly, he is: not altogether taking away the discretion which is left to the President in the matter of the modification of the allocation of the income-tax. All that he is doing is that if the President was to make a modification of the allocation of the income-tax as contained in the previous order, then the President should proceed in a certain manner which he has stated in his amendment. In other words, the only difference between the draft clause as put by me and the amendment of my honourable Friend Pandit Kunzru is this that, so far as the discretion of the President is concerned, it should not be left unregulated, that it should be regulated in the manner winch he suggests.

My reply to that is this : Where is the reason to believe that in modifying or exercising the power of the President to modify the provisions relating to the distribution of the income-tax he will act so arbitrarily as to take away altogether the proceeds of the income-tax ? Where is the ground for believing that the President will not even adopt the suggestion made by my honourable Friend. Pandit Kunzru, in the amendment as he has put it ? There is no reason to suppose or to make such an arbitrary suggestion that the President is going to wipe out altogether the total proceeds which the provinces are entitled to receive under the allocation. After all the President will be a reasonable man ; he will know that to a very considerable extent the proceeds of the income-tax do form part of the revenues of the provinces ; and he will also know that, notwithstanding the fact that there is an emergency, it is as much necessary to help the Centre as it is necessary to keep the provinces going.

Therefore in my judgment there is no necessity to tie down the hands of the President to act in a particular manner in the way suggested by the amendment of my Friend Pandit Kunzru. It might be that the President on consultation with the provinces or on consultation with the Finance Commission or any other expert authority might find some other method of dealing with the proceeds of the income-tax in an emergency, and the suggestion that he might have then might prove far better than what my Friend Pandit Kunzru is suggesting. I therefore think that it would be very wrong to tie down the hands of the President to act in a particular manner and not leave him the liberty or discretion to act in many other ways that might suggest themselves to him. I suggest that it is better to leave the draft as elastic as it is proposed to be done by the Drafting Committee ; no advantage will be gained by accepting the amendment of my Friend Pandit Kunzru.

As I have said, I have made another amendment in the original draft which left the matter entirely and completely to the discretion of the President and Parliament had no say in the matter. By the new amendment I have proposed it is now possible for Parliament to consider any order that the President may make with regard to the allocation of the revenues ; and therefore if the President is doing something which is likely to be very deleterious or injurious to the interests of the provinces', surely many representatives in Parliament who would be drawn from the provinces and who would undoubtedly not forget the interests of the provinces would be in a position to set matters right. I therefore think that the original arrangement should be maintained by virtue of the fact that it is far more elastic than what is suggested by my honourable Friend Pandit Kunzru.

[Amendment of Dr. Ambedkar was adopted and that of Pandit Kunzru was negatived. Article 277, as amended was added to the Constitution.]

ARTICLE 280

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for article 280, the following article be substituted :—

'280. (1) Where a Proclamation of Emergency is in operation, the President may by order suspension of the rights declare that the right to move any court for the enforcement of such of the rights conferred by part III of this Constitution as may be mentioned in the order and all proceeedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

Suspension of the rights guaranteed by article 25 of the Constitution during emergencies.

* CAD, Vol. IX, dated 19th August 1949, p. 523.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament.' "

Sir, the House will realise that clauses (2) and (3) are additions to the old article. In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India. Now, it is held that, notwithstanding the fact that there may he emergency, it may he quite possible to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that Parliament will be free to take such action as it likes.

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***The Honourable Dr. B. R. Ambedkar:** Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matters-and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but—I am also prepared to say—with some emotion. We have passed certain fundamental rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

* CAD, Vol. IX, dated 20th August 1049, pp. 548-51.

Therefore my friends who have spoken against that article will, I hope, understand that I am in no sense an opponent of what they have said. In fact I respect their sentiments very much. All the same I am sorry to say that I do not find it possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so, quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency ; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries—and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries—the position is this. As to the suspension of the right of what is called *habeas corpus* the matter under the English law must of course be dealt with by law. It is not open to the executive to suspend the right *of habeas corpus*. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of *habeas corpus* the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the

matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on 'the President', they will find that that is the position.

Pandit Hirday Nath Kunzru : Will you let me interrupt him, Sir ? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book.

The Honourable Dr. B. R. Ambedkar : Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

Pandit Hirday Nath Kunzru : It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of *habeas corpus* vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

The Honourable Dr. R. R. Ambedkar : Yes. My submission is that in the *United* States while the Congress has the power, the President also, as the Executive Head of the State, has the *ad interim* power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I have made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an *ad interim* power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you find in the United States, there is certainly not very great difference betwen the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and, our executive would be subject to the authority of Parliament. Therefore, so for as the question of vesting all the power to suspend the guarantees is concerned, my submission is

that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton planner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No. 74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amendment to article 280. What he wants in that, any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the ceasing of the Proclamation. I think that is what he wants so far as amendment No. 74 is concerned. My submission is that if the article is read properly, that is exactly what it means. I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which gives power to the Centre to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respect things done or omitted to be done before the expiration of the same period. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution

that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be inoperative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my honourable Friend Pandit Thakur Das Bhargava has in mind.

Pandit Thakur Das Bhargava : In article 277 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

The Honourable Dr. B. R. Ambedkar : The State there means both, because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Centre, the provinces and even the municipalities.

Pandit Thakur Das Bhargava : Whereas in 227 (1) the reference is only to Parliament.

The Honourable Dr. B. R. Ambedkar : That is what I say. 279 will also be governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No. 78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the Drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

Pandit Thakur Das Bhargava : But it is a very fundamental difference.

The Honourable Dr. B. R. Ambedkar : That is a very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.

Pandit Thakur Das Bhargava : Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation ?

The Honourable Dr. B. R. Ambedkar : I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise ? Where is the difficulty ? I do not see anything with regard to the amendment.

An Honourable Member : It is one o'clock now.

Mr. Vice-President : We are going to finish this article.

The Honourable Dr. B. R. Ambedkar : Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No. 78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is "as soon as possible". Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think "as soon as possible" may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

Mr. Vice-President: I now place the amendments before the House.

[All amendments except that of Dr. Ambedkar were either withdrawn or rejected. Article 280 as amended was added to the Contributed.]

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Sir, I move :

"That for article 254 the following article be substituted :—

Public Service Commissions for the Union and for the State.

284. (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more Slates may agree that there shall be one Public Service Commission for that group of states, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States Parliament may by law provide for the appointment of a Joint Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consquential provisions as may appear necesary or desirable for giving effect to the purposes of clause *(2)* of this article.

The Public Service Commission for the Union, if requested so to do by the governor or Ruler of a State, may with the approvel of the President agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commision serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."

The article is self-explanatory and I do not think that any observations are necessary to clear up any point in this article. I will therefore reserve may remarks to the stage when I may be called upon to reply to any criticism that may be made.

Shri Lakshminarayan Sahu (Orissa : General) **:** May I know, Sir, why the provision as to any such law by Parliament is introduced and also why mention has been made of Ruler in these provisions ?

The Honourable Dr. B. R. Ambedkar: If I understand my friend Mr. Sahu correctly, he wants to know why we have introduced the provision for Parliament to make law. He will understand that the basic principle is that each State should have its own Public Service Commission. But, if, for administrative purposes or for financial purposes it is not possible for each State to have a Public Service Commission of its own, power is left open for two States by a resolution to confer power upon the centre to make provision for a joint Regional Commission to serve the needs of two such States which, as I have said, either for administrative or for financial reasons are not in a position to have a separate independent Commission for themselves. Obviously, when such a power is conferred upon the Centre, it must be that the power so conferred must be regulated by law made by Parliament and it should not be open to the President either to constitute a Joint Commission for two States by purely executive

*CAD, Vol. IX, 22nd August 1949, pp. 555-556.

order. It is for that purpose that power is given to Parliament to regulate the composition of any Commission which is to serve two States.

Shri Lakshminarayan Sahu : The other point as to why the 'Ruler' has been mentioned ?

The Honourable Dr. B. R. Ambedkar : Because it may be that even a State in Part III may find it unnecessary to have an independent Public Service Commission for itself Consequently, the door again there should not be closed to a State in Part III if that State were to agree to any State in Part I jointly to make a request to the President that a Joint Commission may be appointed. That is the reason why 'Rule' is included in the provisions of this article.

Shri R. K. Sidhva (C. P. & Berar : General)**:** I want one clarification. In clause (3) it is stated "with the approval of the President, agree to serve all or any of the needs of the State." May I know if any local body wants to utilise the services of the Service Commission, will that be allowed ?

The Honourable Dr. B. R. Ambedkar : Yes. There is a separate article for that making provision that if a local authority wants its needs to be served by the Public Service Commission, it will be possible for Parliament to confer such authority upon the Public Service Commission also to serve the needs of such local authority.

(Amendment No. 2 was not moved)

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***Mr. President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not think there is anything that I need say.

[All amendments except that of Dr. Ambedkar were rejected Article 284 as amended was added to the Constitution.]

ARTICLE 285

Mr. Naziruddin Ahmad : ...I think it is difficult for anyone to try to follow these changes. I therefore object not only on the ground of their being in breach of the rules but also on the ground they are in a form not readily intelligible and they should have been expressed as amendments to the Constitution itself.

The Honourable Dr. B. R. Ambedkar: This is not the first time when my friend has raised a point of Order. You have been good enough to allow the Drafting Committee to depart from the technicalities of the Rules of Procedure and I therefore submit that in this case also you will be pleased to allow us to proceed.

*CAD, Vol. IX, 22nd August 1949, p. 571.

Ibid., p. 572.

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†**Mr. President :** ...Dr. Ambedkar may explain how the separate articles came into being. You move them together and we may take them separately at the time of voting.

The Honourable Dr. B. R. Ambedkar : Yes, they may be put separately.

Sir I move :

"That for article 285, the following articles be substituted :—

Appointment and term of office of members

285. *(1)* The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commisssion, by the Governor or Ruler of the State:

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier :

Provided that—

(a) a member of a Public Service Commission may by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President and in the case of a State Commission, to the Governor or Ruler of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause *(1)* or clause *(3)* of article 285-A of this Constitution.

(3) A person who holds office as a member of a Public Service Commision shall, on the expiration of his tern of office, be ineligible for re-appointment to that office.

Removal and suspension of a member of a public Service Commission

285A. *(1)* Subject to the provisions of clause *(3)* of this article, the Chairman or any other member of a Public shall only be removed from office by order of the President on the ground of misbehaviour after the Supreme Court on a reference being made to it by the President has, on inquiry held in accordance with the procedure prescribed in that behalf under article 121 of this Constitution, reported that the Chairman or such other member, as the case may be, ought on any such ground be removed.

(2) The President in the case of the Union Commission or a Joint Commission and the Governor or Ruler in the case of a State Commission may suspend from office the Chairman or any other member of the Commission in respect of whom

*CAD, Vol. IX, 22nd August 1949, p. 572.

† *Ibid.,* pp. 573-576.

a reference has been made to the supreme Court under clause *(1)* of this article until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in clause *(1)* of this article, the President may, by order, remove from office the Chairman or any other member of a Public Service Commission if the Chairman or, such other member, as the case may be—

(a) is adjudged as insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; "

And here I want to add a third one, as *(c)* :

"*(c)* is in the opinion of the President unfit to continue in office by reason of infirmity of mind or body.

(4) For the purpose of clause *(1)* of this article, the Chairman or any other member of a Public Service Commission may be deemed to be guilty of misbehaviour if he is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit from emoluments arising therefrom otherwise than as a member and in common with the other members of any incorporated company.

Power to make regulations as to conditions of service of members and staff of the Commission

285-B. In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor or Ruler of the State, may by regulation—

(a) determine the number of members of the Commission, and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service : Provided that the conditions of service of a member of a Public Service Commission shall not be altered to his disadvantage after his appointment.

285-C. On ceasing to hold office—

Bar to the holding of offices by members of to be such members.

(a) the Chairman of the Union Public Service Commissions on ceasing Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either Under the Government of India or under the Government of a State.

Sir, these are the clauses which deal with the Public Services Commissions, their tenure of offce and qualifications and disqualifications and their removal and suspension. I should very briefly like to explain to the House the matters embodied here, the principal matters that are embodied in these articles.

The first point is with regard to the tenure of the Public Service Commission. That is dealt with in article 285. According to the provisions contained in that article the term of office of a member of the Public Service Commission is fixed at six years or in the case of the Union Commission, until he reaches the age of 65 and in the case of a State Commission untill he reaches the age of 60. That is with regard to the term of office.

Then I come to the removal of the members of the Public Service Commission. That matter is dealt with in article 285-A. Under the provisions of that article, a member of the Public Service Commission is liable to be removed by the President on proof of misbehaviour. He is also liable to be removed by reason of automatic disqualification. This automatic disqualification can result in three cases. One is insolvency. The second is engaging in any other employment and the third is that he becomes infirm in mind or body. With regard to misbehaviour, the provision is some what peculiar. The honourable House will remember that in the case of the removal of High Court Judges or the Judges of the Supreme Court, it has been provided in the articles we have already passed that they hold their posts during good behaviour, and they shall not be liable to be removed until a resolution in that behalf is passed by both Chambers of Parliament. It is felt that it is unnecessary to provide such a stiff and severe provision for the removal of members of the Public Service Commission. Consequently it has been provided in this article that the provisions contained in the Government of India Act for the removal of the Judges of the High Court would be sufficient to give as much security and as much protection to the members of the Public Service Commission. I think the House will remember that in the provision contained in the Government of India Act, what is necessary for the removal of a Federal Court Judge or a High Court Judge is an enquiry made by the Federal Court in the case of the High Court Judges or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it is open to the Governor-General to remove either the Federal Court Judge or the Judge of the High Court. We have adopted the same provision with regard to

the removal of Public Service Commission, wherever there is a case of misbehaviour.

With regard to automatic disqualifications, I do not think that there could be any manner of dispute because it is obvious that if a member of the Public Service Commission has become insolvent, his integrity could not be altogether relied upon and therefore it must act as a sort of automatic disqualification. Similarly, if a member of the Public Service Commission who is undoubtedly a whole-time officer of the State, instead of discharging his duties to the fullest extent possible and devoting all his time, were to devote a part of his time in some other employment, that again should be a ground for automatic disqualification. Similarly the third disqualification, namely, that he has become infirm in body and mind may also be regarded, without any kind of dispute, as a fit case for automatic disqualification. Members of the House will also remember that while reading article 285-A, there is a provision made for suspension of a member of the Public Services Commission during an enquiry made by the Supreme Court. That provision is, I think, necessary. If the President thinks that a member is guilty of misbehaviour, it is not desirable that the member should continue to function as a member of the Public Services Commission unless his character has been cleared up by a report in his favour by the Supreme Court.

Now, I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Services Commission bom—the Union and State Public Services Commissions. Members will see mat according to article 285, clause *(3),* we have made both the Chairman and the Members of the Central Public Services Commission as well as the Chairman of the State Commission, and the members of the State Commission ineligible for reappointment to the same posts: that is to say, once a term of office of a Chairman and Member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission, we have said that he shall not be reappointed. I think that is a very salutary provision, because any hope that might be held out for reappointment, or continuation in the same appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article.

Then the second thing is that according to article 285-C, there is also a provision that neither of these shall be eligible for employment in any

other posts. There is therefore a double disqualification. There is no permission to continue them in their office, nor is there provision for their appointment in any other posts. Now, the only exceptions, that is to say, cases where they could be appointed are these :

> The Chairman of a State Public Services Commission is permitted to be a Chairman or a Member of the Union Commission, or a Chairman of any other State Commission.
>
> Secondly, the Members of the Union Commission can become Chairman of the Union Commission or any other State Commission.
>
> Thirdly, the Members of the State Commission can become a Chairman or a member of the Union Commission, or the Chairman of a State Commission.

In other words, the exceptions are : namely, that one man, who is a Member of the Union Public Services Commission, may become a Chairman of the State Public Services Commission can become a Chairman of the Union Public Services Commission, or become a Member of the Union Public Services Commission. The principal point to be noted is this, that neither the Chairman nor the Member of a State Commission can have employment under the same State. He can be appointed by another State as a Chairman or he can be appointed by the Central Government as the Chairman of the Union Public Services Commission or a Member of the Union Public Services Commission., the object being not to permit the State to exercise any patronage in die matter either of giving continued employment in the same post, or in any other post, so that it is hoped that with these provisions the Members of the Commission will be as independent as they are expected to be.

I do not think there is any other point which calls for explanation.

Shri Lakshminarayan Sahu : What about Members of Joint Commissions ?

The Honourable Dr. B. R. Ambedkar : A Joint Commission is the State Commission. That is defined in clause *(4)* of article 284.

Dr. Monomohan Das (West Bengal : General) **:** I would like to be clear on some points about 285-A. If the Supreme Court as being referred by the President reports that the Chairman or some other Member of the Public Service Commission should be removed, then will it be obligatory on the part of the President to remove him ?

The Honourable Dr. B. R. Ambedkar : Certainly.

Mr. Naziruddin Ahmad : You have asked the honourable Member to explain to the House the difference between the new draft and the original. That would have been helpful for a proper appreciation of the real changes.

The Honourable Dr. B. R. Ambedkar : If any point is raised in the course of the debate, I will explain it in the course of my reply.

Mr. Naziruddin Ahmad : I do not know whether to oppose or not to oppose.

The Honourable Dr. B. R. Ambedkar : You must have read both drafts. The only thing you might not have read are the commas and semicolons.

Mr. President : I will now take up the amendments.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, there are just a few points on which I would like to say a word or two in reply to the criticism made on the articles which I have submitted to the House.

The first criticism is with regard to the composition of the Public Service Commission. The reservation made there that at least one-half of the members of the Public Service Commission should have been servants of the Crown has been objected to on the ground that this is really a paradise prepared for the I.C.S. people. I am sorry to say that those who have made this criticism do not seem to have understood the purpose, the significance and the functions of the Public Service Commission. The function of the Public Service Commission is to choose people who are fit for Public Service. The judgment required to come to a conclusion on the question of fitness presupposes a certain amount of experience on the part of the person who is asked to judge. Obviously nobody can be a better judge in this matter than a person who has already been in the service of the Crown. The reason therefore why a certain proportion is reserved to persons in service is not because there is any desire to oblige persons who are already in the service of the Crown but the desire is to secure persons with the necessary experience who would be able to perform their duties in the best manner posible. However, I am prepared to accept an amendment if my Friend Mr. Kapoor is prepared for it. I am prepared to say—

"Provided that as nearly as may be one-half" instead of saying

"Provided that at least one-half"

Shri H. V. Kamath : Why not say "not more than one-half"?

The Honourable Dr. B. R. Ambedkar : No, I have done my best.

With regard to the second question, that persons who have been in the Public Service Commission should be permitted to accept an honorary office under the State, personally I am not now inclined to accept that suggestion. Our whole object is to make the members of the Public Service Commission independent of the executive. One way of making

*CAD, Vol. IX, 22nd August 1949, pp. 592-593.

them independent of the executive is to deprive them of any office with which the executive might tempt them to depart from their duty. It is quite true that an office which is not an office of profit but an honorary office does not involve pay. But as every body knows pay is not the only thing which a person obtains by reason of his post. There is such a tiling as "pay, pickings and pilferings". But even if it is not so. there is a certain amount of influence which an office gives to a person. And I think it is desirable to exclude even the possibility of such a person being placed in a post where, although he may not get a salary, he may obtain certain degree of influence.

Now, I come to the amendment of my Friend Mr. Kunzru. I quite agree with him that there is obviously a distinction made between the services to be employed under the Public Service Commission and the services to be employed under the High Court, the Supreme Court and the Auditor-General. I would like to explain why we have made this distinction. With regard to the staff of the High Court and the Supreme Court, at any rate those who are occupying the highest places are required to exercise a certain amount of judicial discretion. Consequently we felt that not only their salaries and pensions should he determined by the Chief Justice with the approval of the President but the conditions of their service also should be left to be determined by the Chief Justice. In the case of the Public Service Commission much of the staff—in fact the whole of the staff—will be merely concerned with what we call "ministerial duties" where there is no authority and no discretion is left. That is the reason why we have made this distinction. But I quite see that my argument is probably not as sound as it might appear. All the same I would suggest to my honourable Friend Pandit Kunzru to allow this article to go through on the promise that at a later stage if I find that there is a necessity to make a change I will come before the House with the necessary amendment.

Sir, my attention is drawn to the fact in the cyclostyled copy of my amendment to article 285-A in sub-clause *(3)(b)* the words ought to be 'in any paid employment'.. They have been typed wrongly as 'in any body's employment.' I hope the correction will be made.

As I said to Pandit Kunzru, the Drafting Committee will look into the matter and if it feels that there are grounds to make any alteration they will, with the permission of the House come forward with an amendment so that the position may be rectified.

Mr. President : I will now put the amendments to vote first.

The question is :—

> "That in amendment No. 3 above, in the proviso to clause (1) of the proposed article 285, for the word 'one-half' the word 'one third' be substituted."

Shri Jaspat Roy Kapoor : In the place of this I accept the suggestion made by Dr. Ambedkar to have nearly 'as may be one-half'.

Mr. President : Then I shall put that to vote. The question is :

"That in amendment No. 3 above, in the proviso to clause *(1)* of the proposed article 285, for the words 'at least one-half' the words 'as nearly as may be one-half' be substituted."

[The amendment was adopted. Article 285, as amended, was added to the Constitution.]

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ARTICLES 286 TO 288-A

***Mr. President :** We shall now proceed with the consideration of article 286 and the subsequent articles.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Sir, May I, with your permission, move amendments Nos. 12, 16, 17 and 19 together ? They all relate to the same subject. There may be a common debate and then you might put each amendment separately.

Mr. President : Yes, I agree.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 286, the following article be substituted :—

Functions of Public Service Commission

286 *(1)* It shall be the duty of the Union and the State Public Service Commissions to *conduct* examinations for appointments to the services of the Union und the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those Stales in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts ;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointment, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be

*CAD, Vol. IX, 23nd August 1949, pp. 597-598.

paid out of the Consolidated Fund of India or, as the case may be, of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor or Ruler of the State may refer to them :

Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause *(3)* of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class citizens in the Union or a State.

(5) All regulations made under the proviso to clause *(3)* of this article by the President or the Governor or Ruler of a State shall be laid for non less than fourteen days before each House of Parliament or the Houses or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

"That for article 287, the following be substituted :—

287. An Act made by Parliament or. as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also of any local authority or other body corporate constituted by law or public institution."

Power to extend functions of Public Service Commission

"That for article 288, the following be substituted :—

288. The expenses of the Union or a State Public service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the State."

Expenses of Public service Commissions

"That for amendment No. 3075 of the List of Amendments the following be substituted :—

"That after article 288, the following new article be added :—

288-A. *(1)* It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, die reasons for such non-acceptance to be laid before each House of Parliament.

Reports of the Public Service Commissions

(2) It shall be the duty of a State Commission to present annually to the Governor or Ruler of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor or Ruler or each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor or Ruler, as the case may be, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

The articles are self-explanatory and I do not think that at this stage it is necessary for me to make any comments to bring out any of the points, because the points are all very plain. I would therefore reserve my remarks towards the end when after the debate probably it may be necessary for me to offer some explanation of some of the points raised.

Sir, I move.

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***Mr. President:** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, after the speeches that have been made by my Friend Mr. Ananthasayanam Ayyangar and my Friend Mr. Kunzru, there is very little that is left for me to say in reply to the various points that have been made. Mr. Jaspat Roy Kapoor said that clause *(2)* was unnecessary. I do not agree with him because clause *(2)* deals with a matter which is quite different from the one dealt with in the original article 284.1 think it is necessary, therefore, to retain both the clauses.

The only point that remains for me to say anything about is the question that is raised about the Scheduled Castes and the Backward Classes. I think I might say that enough provision has been made, both in article 296 which we have to consider at a later stage and in article 10, for safeguarding the interests of what are called the Scheduled Castes, the Scheduled Tribes and the Backward Classes. I do not think that any purpose will be served by making a provision whereby it would be obligatory upon the President to appoint a member of what might be called either a Scheduled Caste, or Scheduled Tribe or a member belonging to the backward classes.

Shri A. V. Thakkar (Saurashtra)**:** Other backward classes.

The Honourable Dr. B. R. Ambedkar: The function of a member of the Public Service Commission is a general one. He cannot be there to protect the interests of any particular class. He shall have to apply his mind to the general question of finding out who is the best and the most

*CAD, Vol. IX, 23nd August 1949, pp. 629-630.

efficient candidate for an appointment. The real protection, the real method of protection is one that has been adopted, namely, to permit the Legislature to fix a certain quota to be tilled by these classes. I am also asked to define what are backward classes. Well, I think the words "backward classes" so far as this country is concerned is almost elementary. I do not think that I can use a simpler word than the word "Backward Classes". Everybody in the province knows who are the backward classes, and I think it is, therefore, better to leave the matter as has been done in this Constitution, to the Commission which is to be appointed which will investigate into the conditions of the state of society, and to ascertain which are to be regarded as backward classes in this country.

Shri A. V. Thakkar : May I ask whether it will not take several years before that is done ?

The Honourable Dr. B. R. Ambedkar : Yes, but in the meantime, there is no prohibition on any provincial government to make provisions for what are called the backward classes. They are left quite free, by article 10. Therefore, my submission is that there is no fear that the interests of the backward classes or the Scheduled Castes will be overlooked in the recruitment to the services. As my Friend Pandit Kunzru has said, the articles I have presented to the House are certainly a very great improvement upon what the articles were before in the Draft Constitution. We have, if 1 may say so for myself, studied a great deal the provisions in the Canadian law and the provisions in the Australian law, and we have succeeded, if I may say so, in finding out a *via media* which I hope the House will not find any difficulty in accepting.

[Article 286, as proposed by Dr. Ambedkar not adopted and added to the Constitution.]

ARTICLE 292

***The Honourable Dr. B. R. Ambedkar :** I move that for article 292, the following be substituted :

"292 *(1)* Seats shall be reserved in the House of the People for—

Reservation of seats for Scheduled castes and Scheduled Tribes in the House of the people

(a) the Scheduled Castes;

(b) the scheduled tribes except the scheduled tribes in the tribal areas of Assam;

(c) the scheduled tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes under clause *(1)* of this article shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state in the House of the

*CAD, Vol. IX, 23nd August 1949, p. 633.

People as the population of the Scheduled Castes in that State or of the Scheduled Tribes in that State or part of that State as the case may be, in respect of which scats are so reserved bears to the total population of that State."

This article 292 is an exact reproduction of the decisions of the Advisory Committee in this matter and I do not think any explanation is necessary.

Mr. President : This represents the decision which was taken at another session of this House when we considered the Advisory Committee's report. This puts in form the decision then taken....

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General)**:** I was going to suggest, with regard to the amendment which stands in the name of Rev. Nichols Roy, that this is more relevant to the interpretation clause where the Scheduled Castes and the tribal people will be defined. If my friend is keen on moving this amendment, I think it should properly stand over until we come to that part of the Constitution—article 303.

Mr. President : Have you followed Dr. Ambedkar ?

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General)**:** Yes, I have. My amendment was based on the amendment which was going to be moved by Mr. Thakkar, No. 3108, and I now find that the amendment (No. 28) which he is now going to move is in a different form. However, if Mr. Thakkar is not going to move this amendment, I also will not move my amendment now. But I reserve the right that I shall move my amendment at the time when this matter will be discussed under article 303.

The Honourable Dr. B. R. Ambedkar : I also suggest that the amendments which stand in the name of Mr. Thakkar should stand over and be taken at the same time when we are dealing with article 303.

The Honourable Rev. J. J. M. Nichols-Roy : If Mr. Thakkar agrees. I will agree.

Shri A. V. Thakkar (Saurashtra) **:** I completely agree.

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†Sardar Bhopinder Singh Man (East Punjab : Sikh) **:** As a number of amendments have been moved, it seems to me that some time be given to oppose those amendments.

Mr. President : As I said we have discussed this very proposition for two full days in this House, and every section of the House had full

*CAD, Vol. IX, 24nd August 1949, pp.643-644.

†*Ibid.,* pp. 657-658:

opportunity of expressing itself on the general principles. Now it is those very principles which are sought to be embodied in the resolution which has been placed before the House by Dr. Ambedkar. I do not think any further discussion will help the Members. I therefore call upon Dr. Ambedkar to speak.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, a great many of the points which were raised in the course of the debate on this article and the various amendments are, in my judgment, quite irrelevant to the subject matter of this article. They might well be raised when we will come to the discussion of the electoral laws and the framing of the constituencies. I, therefore, do not propose to deal with them at this stage.

There are just three points which, I think, call for a reply. One point is the one which is raised by Mr. Laskar by his amendment. His amendment is to introduce the words "save in the case of the Scheduled Castes in Assam". I have completely failed to understand what he intends to do by the introduction of these words. If these words were introduced it would mean that the Scheduled Castes in Aasam will not be entitled to get the representation which the article proposes to give them in the Lower House of the Central Parliament, because if the words stand as they are, "save in the case of the Scheduled Castes in Assam" unaccompanied by any other provision, I cannot see what other effect it would have except to deprive the Scheduled Castes of Assam of the right to representation which has been given to them. If I understand him correctly, I think the matter, which he has raised, legitimately refers to article 67B of the Constitution which has already been passed. In that article it has been provided that the ratio of representation in the Legislature should have a definite relation to certain population figures. It has been laid down that the representation in the Lower House at the Centre shall be not less than one representative for every 7,50,000 people, or not more than one representative for a population of 5,00,000. According to what he was saying—and I must confess that it was utterly impossible for me to hear anything that he was saying— but if I gathered the purport of it, he seems to be under the impression that on account of the division of Sylhet district the population of the Scheduled Castes in Assam has been considerably reduced and that there may not be any such figure as we have laid down, namely 7,50,000 or 5,00,000, with the result that he feels that the Scheduled Castes of Assam will not get any representation. But I should like to tell him that the provision in article *61(5)(b)* does not apply to the Scheduled Castes.

It applies to the constituency. What it means is that if a constituency consists of 7,50,000 people, that constituency will have one seat. It may be that within that constituency the population of the Scheduled Castes is much smaller, but that would not prevent either the Delimitation Committee or Parliament from allotting a seat for the Scheduled Castes in that particular area. His fear, therefore, in my judgment, is utterly groundless.

Then I come to the amendment moved by Sardar Hukam Singh in which he suggests that provision ought to be made whereby the Scheduled Castes and the Scheduled Tribes would be entitled to contest seats which are generally not reserved for the Scheduled Castes or the Scheduled Tribes. He said that the Drafting Committee has made a deliberate omission. I do not think that is correct. It is accepted that, the Scheduled Castes and the Scheduled Tribes shall be entitled to contest seats which are not reserved seats, which are unreserved seats. That is contained in the report of the Advisory Committee which has already been accepted by the House. The reason why that particular provision has not been introduced in article 292 is because it is not germane at this place. This proposition will find its place in the law relating to election with which this Assembly or the Assembly in its legislative capacity will have to deal with. He therefore need have no tear on that ground.

With regard to the point raised by my Friend Mr. Pillai that the population according to which seats are to be reserved should be estimated by a fresh census, that matter has been agitated in this House on very many occasions. I then said that it was quite impossible for the Government to commit itself to taking a fresh census but the Government has kept its mind open. If it is feasible the government may take a fresh census in order to estimate the population of the Scheduled Castes or the Scheduled Tribes in order to calculate the total representation that they would be entitled to in accordance with the provisions of article 292. The Government is also suggesting that if in any case it is not possible to have a fresh census, they will estimate the population of these communities on the basis of the voters' strength which may be calculated from them, in which case we might be able to arrive at what might be called a rough and ready estimate of the population. I do not think it is possible for me to go beyond that.

All the other amendments I oppose.

[Article 292, as amended by Dr. Ambedkar's motion was added to the Constitution.]

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ARTICLE 293

***Mr. President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not think it is necessary to say anything.

[Article 293 was added to the constitution without any amendment.]

ARTICLE 294

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 294, the following be substituted :—

Reservation of seats for minorities in Legislative Assemblies of the States

294. (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of the Assam in the Legislative Assembly of every State for the time being specified in Part I or Part III of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative assembly of any State under clause {*I)* of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and the Municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shilong.' "

This article is exactly the same as the original article as it stood in the Draft Constitution. The only amendment is that the provision for the reservation of seats for the Muslims and the Christians has been omitted from clasue *(1)* of article 294. That is in accordance with the decision taken by this Assembly on that matter.

ARTICLE 295-A

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

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*CAD, Vol. IX, 24nd August 1949, pp. 662.

†*Ibid.,* p. 663.

‡*Ibid.,* p. 674.

"That after article 295, the following new article be inserted :—

'295-A. Notwithstanding anything contained in the foregoing provisions of this Part, the provisions of this Constitution relating to the reservation of seats for the Scheduled Castes and the Scheduled Tribes either in the House of the People or in the Legislative Assembly of a State shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution."

Reservation of seats for Scheduled Castes and Scheduled Tribes to cease to be in force after the expiration of ten years from the commencement of this constitution

This is also in accordance with the decision of the House. I do not think any explanation is necessary.

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***Mr. President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Mr. President, Sir, there are just four amendments about which I would like to say a few words. I will first take the amendment of my Friend Mr. Bhargava, and say that I am prepared to accept his amendment, because I find that although in the general body of the report that was made to this House, no mention as to time-limit was made to the proposal for allowing representation to Anglo-Indians by nomination, I find that in the subsequent debate which took place on that report, there is an amendment moved by my friend Pandit Bhargava which is very much in the same terms as the amendment which he has now moved, and I find that that amendment of his was accepted by the House. I, therefore, am bound to accept the amendment that he has moved now.

Next, with regard to the question raised by Mr. Naziruddin Ahmad, one part of it has been, I think, met by the amendment moved by my Friend Mr. Krishnamachari which I also accept. I am not at all clear in my own mind at the present stage whether the words in the clause mean that the time-limit should begin to operate from the commencement of the Constitution or whether from the date of the first election to the new Parliament. But all I can say at this stage is that that is a matter which the Drafting Committee will consider and if it is necessary, they will bring about some amendment to carry out the intention that the period should be from the date of first meeting of the first Parliament.

With regard to the other arguments which have been used by my friends Mr. Muniswami Pillai and Mr. Monomohan Das, I am sorry it is not possible to accept that amendment. Their proposal is that while they are prepared to leave the clause as it is, they propose to vest Parliament with the power to alter this clause by further extension of the period of ten years. Now first of all we have as I said, introduced this matter in the

*CAD, Vol. IX, 25th August 1949, pp. 696-697.

Constitution itself, and I do not think that we should permit any change to be made in this, except by the amendment of the Constitution itself.

I would like to say one or two words on the remarks of Members of the Scheduled Castes who have spoken in somewhat passionate and vehement terms on the limitation imposed by this article. I have to say that they have really no cause for complaint, because the decision to limit the thing to ten years was really a decision which has been arrived at with their consent. I personally was prepared to press for a larger time, because I do feel that so far as the Scheduled Castes are concerned, they are not treated on the same footing as the other minorities. For instance, so far as I know the special reservation for the Mussalmans started in the year 1892; so to say, the beginning was made then. Therefore, the Muslims had practically enjoyed these privileges for more or less sixty years. The Christians got this privilege under the Constitution of 1920 and they have enjoyed it for 28 years. The Scheduled Castes got this only in the Constitution of 1935. The commencement of this benefit of special reservation practically began in the year 1937 when that Act came into operation. Unfortunately for them, they had the benefit of this only for two years, for from 1939 practically up to the present moment, or up to 1946, the Constitution was suspended and the Scheduled Castes were not in a position to enjoy the benefits of the privileges which were given to them in the 1935 Act, and it would have been quite proper I think, and generous on the part of this House to have given the Scheduled Castes a longer term with regard to these reservations. But as I said, it was all accepted by the House. It was accepted by Mr. Nagappa and Mr. Muniswamy Pillai and all these Members, if I may say so—I am not making any complaint—were acting on the other side, and I think it is not right now to go back on these provisions. If at the end of the ten years, the Scheduled Castes find that their position has not improved or that they want further extension of this period, it will not be beyond their capacity or their intelligence to invent new ways of getting the same protection which they are promised here.

Shri A. V. Thakkar (Saurashtra) **:** What about the Scheduled Tribes who are lower down in the scale ?

The Honourable Dr. B. R. Ambedkar : For the Scheduled Tribes I am prepared to give far longer time. But all those who have spoken about the reservations to the Scheduled Castes or to the Scheduled Tribes have been so meticulous that the thing should end by ten years. All I want to

say to them, in the words of Edmund Burke, is "Large Empires and small minds go ill together".

Mr. President : I shall now take up the amendments one by one....

Shri Yudhisthir Mishra (Orissa States)**:** Sir, I would like to withdraw my amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : Amendment No. 40 (List I—Fifth Week)

Shri S. Nagappa : In view of the explanation given by Dr. Ambedkar I do not wish to press my amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : Amendment No. 99 (List III—Fifth Week).

Shri V. I. Muniswamy Pillay : I was not present in the House on the 25th May when the Second Report of the Minorities Committee was considered. However, in view of what Dr. Ambedkar has said I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

***Mr. Naziruddin Ahmad :** The principle of my amendment has been substantially accepted by Mr. T. T. Krishnamachari's amendment. Therefore, I wish to withdraw my amendment.

[The amendment was, by leave of the Assembly, withdrawn.]

Mr. President : The next amendment is No. 113 by Pandit Thakur Das Bhargava. This has been accepted by Dr. Ambedkar. The question is :

"That in amendment No. 38 of List 1 (Fifth Week) of Amendments to Amendments, in the proposed new article 295-A, after the word 'Constitution' the brackets and letter *'(a)'* be inserted and after the word 'State', the following be inserted :—

'(b) relating to the representation of the Anglo-Indian community either in the House of the people or in the "Legislative Assemblies of the States through nomination.' "

(The amendment was adopted.)

Mr. President : The next amendment is Drafting Committee's amendment No. 114. The question is :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, to the proposed article 295-A, the following proviso be added :—

'Provided that nothing in this article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or the Assembly, as the case may be.' "

[The amendment was adopted. Article 295-A, as amended, was added to the Constitution.]

*CAD, Vol. IX, 25th August 1949, p. 698.

ARTICLE 296

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***Mr. Naziruddin Ahmad :** .....My point is that the amendment should be rejected on technical as well as substantial grounds

Shri T.T. Krishnamachari (Madras : General) **:** May I submit, Sir, that my honourable Friend is wholly out of order in raising this point of Order, bacause this matter was accepted by the House. The honourable Member had two clear days' notice of it and if he is not able to understand the significance of the amendment in two days, I am sure he cannot understand it in two months.

Mr. President : Is it suggested that when the question was reopened last time with regard to reservation of seats this also was one of the points considered and on this point also a decision was taken then ?

Shri T. T. Krishnamachari : My suggestion is that since Muslims and Indian Christians are no longer to be treated as minorities this point does not arise.

Mr. Naziruddin Ahmad : Not at all. I submit that what was considered was the question of representation of minorities in the legislature. But this new article relates to a different matter, *viz.,* the protection of the minorities in getting minor jobs in the secretariats and districts etc. On the matter of representation in the legislature Sardar Patel was kind enough to consult as and we agreed not to have any reservation in the legislature.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Sir, the position is this. The report of the Minorities Committee provided that all minorities should have two benefits or privileges, namely, representation in the legislatures and representation in the services. Paragraph 9 of the report which was accepted by this House contained this :

> "In the all-India and provincial services the claims of all minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency in the administration."

That was the original proposition passed by this House. Subsequently the Advisory Committee came to the conclusion on the consent of the two minorities—Muslims and Christians—that they were not to be treated as minorities. When the House has now accepted that the only minorities to be provided for in this manner are the Scheduled Castes and the Scheduled Tribes obviously the Drafting Committee is bound by the decision of the House and to alter the article in terms of such decision.

*CAD. Vol. IX. 26th August 1949, p. 702.

Mr. President : The point of Order taken is that what was decided at the time of reconsideration of the articles relating to minorities referred only to reservation of seats and that the question of services was not taken into consideration and that point was not decided.

The Honourable Dr. B. R. Ambedkar : As I understand it, the decision was that they were not minorities and therefore they are not to have either of the two privileges.

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ARTICLE 299

***The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move :

"That for article 299, the following article be substituted :—

'299. *(I)* There shall be a Special Officer for minorities to be appointed by Special Officer for minorities the Special Officer, President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for minorities under this Constitution and to report to the President upon the working of the safeguards at such intervals as the president may direct, and the President shall cause all such reports to be laid before each House of Parliament.' "

The original article provided that there should be a minority officer both in the Centre and in each of the provinces. It is now felt that, as the number of minorities has been considerably reduced, it is not desirable to have a cumbrous provision like that for having an officer in each province. The purpose of the original article will be carried out if the Centre appoints an officer and makes him report to the President.

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THIRD SCHEDULE

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in the Third Schedule, in Form I of the Declarations, for the words and brackets solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm
swear in the name of God.' "

Sir, I also move :

"That in the Third Schedule, in Form II of the Declarations, for the words and brackets solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm
swear in the name of God.' "

"That in the Third Schedule, in Form III of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

"CAD, Vol. IX, 26th August 1949, p. 703.

† *Ibid.* pp. 706-707.

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm
swear in the name of God.' "

"That is the Third Schedule, in Form IV of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :-—

'solemnly affirm
swear in the name of God.' "

"That in the Third Schedule, in Form V of the Declarations,—

(a) the words and figure 'for the time being specified in Part I of the First Schedule be omitted;

(b) for the words and brackets 'solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm
swear in the name of God.' "

"That in the Third Schedule, in Form VI of the Declarations,—

(a) the words and figure ' for the time being specified in Part I of the First Schedule be omitted ;

(b) for the words and brackets 'solemnly affirm (or swear)' the following be substituted :—

'solemnly affirm
swear in the name of God.' "

"That in the Third Schedule, in Form VII of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted;

(c) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm
swear in the name of God.' "

"That in the Third Schedule, in Form VIII of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm
swear in the name of God.' "

Sir, I also move :

"That in the Third Schedule for the heading 'Forms of Declarations' the heading 'Forms of affirmations or Oaths' be substituted."

Mr. President : I take it that there is no objection to the heading being changed.

Mr. Naziruddin Ahmad : There is no objection, Sir.

Mr. President : Then the heading is changed....

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***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in Form VI of the Forms of Declarations in the third Schedule, the words 'or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion' be omitted."

These are unnecessary because we do not propose to leave any discretion in the Governor at all.

Shri H. V. Kamath : May I remind Dr. Ambedkar that 143 has not yet been amended ?

The Honourable Dr. B. R. Ambedkar : Yes, I remember that.

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Mr. President : We have abolished all discretion.

Mr. Naziruddin Ahmad : The difficulty arises in connection with the phraseology occurring at the end of Form VI.

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Mr. President : That is why Dr. Ambedkar has moved for its deletion.

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†The Honourable Dr. B. R. Ambedkar : In proposing this amendment, I have not the slightest desire to offend the sentiments of some of the Members who have spoken against the draft on the ground that God has been placed below the line. Sir, in this matter I must admit that we have really no consistent policy which we have followed, for instance, in article 49, which has been passed. God has been, I think, placed above the line and affirmation below the line. In article 81, we have placed affirmation first and the oath afterwards. In this article, to which we have moved amendments, we have merely followed the wording of the principal clause, which runs : "Affirm or Swear". That being the language of the principal clause, the logical sequence was that the affirmation was placed above the line and the oath was placed below. It is a purely logical thing. Now, the reason why we have thought it desirable to place affirmation first and oath afterwards, was because in this country, at any rate, the Hindu, when he is called upon in any Court of Law to give evidence, generally begins by an affirmation. It is only Christians, Anglo-Indians and Muslims who swear. The Hindus do not like to utter the name of God. I therefore thought that in a matter of this sort, we ought to respect the sentiments and practice of the majority community, and consequently we have introduced this particular method by stating the position as to affirmation and oath. As I said, I have neither one view nor the other. I am perfectly prepared to carry out the wishes of the House. If the House is of the opinion that Mr. Kamath's amendment should be accepted—and

*CAD, Vol. IX, 26th August 1949, pp. 711-712.

†*Ibid.,* pp. 714-715.

I submit that that would be contrary to the practice prevalent in this country so far as the Hindus are concerned—then what I would suggest is this, that my amendments would be allowed at this stage, with the liberty that the Drafting Committee will take into consideration all the other articles which have been incorporated in the Constitution so far as to bring the whole matter in line. It will not be proper to make a change here and to leave the other articles as they stand.

Shri Mahavir Tyagi : Let grammer not stand in the way of God !

Shri H. V. Kamath : With regard to article 81, there was no amendment before the House, It was stated that every Member in each House of Parliament should make an affirmation and an oath according to the Third Schedule. But what the House has already adopted is the oath or affirmation for the President and the Governors, and that is in the form set out by me in my amendment today.

Mr. President : It is not necessary to have a discussion over this matter. You had better vote on it. It is not a question on which there is room for much discussion. As Dr. Ambedkar has said, he has no particular feeling in the matter, and if the House decides one way, he will ask for the liberty TO put all the articles in mat form. So I shall put the amendment to the vote.

Mr. Naziruddin Ahmed : My amendments have not been touched by Dr. Ambedkar at all.

Mr. President : That is different.

The Honourable Dr. B. R. Ambedkar : Alter the word "sincerely"? After "sincerely" I would like to add something more. It would not be enough.

Mr. President : He wants the omission of the word "affection".

(after a pause)

Well, I will take up the amendment.

(Following amendment was adopted)

'That in Amendment Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule, for the words

'solemnly affirm
swear in the name of God.' "

(Proposed to be substituted), the following be substituted :—

'solemnly affirm
swear in the name of God.' "

(The amendment was adopted.)

Mr. President : I take it that the House gives leave to Dr. Ambedkar to put the other articles, wherever such similar expressions occur in the same order.

Honourable Member : Yes.

Shri Jaspat Roy Kapoor : May I suggest that in all the places where we have the words "affirmation or oath" we may have the 'oath' first and 'affirmation' afterwards. It should be so in the substantive clause also.

Mr. President: That is so. It should be put in the same order wherever the expression occurs.

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Mr. President : The question is :

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, for the words ' all manner of people ' the words ' all people ' be substituted."

Mr. Naziruddin Ahmad: This may be left to the Drafting Committee.

Mr. President : It is not pressed. So I take it that it is dropped.

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Mr. President : The question is :

"That in Form VI of the Forms of Declarations in the Third Schedule, the words 'or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion' be omitted."

(The amendment was adopted.)

Mr. President : I do not think it is necessary to put the other amendments to vote, because the voting will be the same as with regard to the other amendments.

Mr. Naziruddin Ahmad : They may be formally put and rejected by the House.

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***Mr. President :** Then I put the proposition moved by Dr. Ambedkar, as amended by Mr. Kamath's amendment and Dr. Ambedkar's own amendment, with regard to all these forms. I do not think it is necessary to read them separately.

(The motion was adopted.)

Mr. President : The question is :

"That the Third Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Third Schedule as amended, was added to the Constitution.

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†Mr. President : I do not think the Member has any justification for supposing that other members do not study the amendments.

Mr. Naziruddin Ahmad : I have been assured by some very serious Members that they have not read the amendments. Therefore, in view of

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*CAD, Vol. IX, 26th August 1949, p. 717.

†*Ibid.,* 29th August 1949, p. 721.

the serious nature of the amendments I say that the house should have time to consider them....

Mr. President : If any question is raised with regard to any particular amendment or item and if Members want time, we shall consider that at that time. Let us now proceed item by item.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** I would like to say that these amendments were circulated on Saturday, day before yesterday.

Mr. President : Were they circulated on Saturday ?

Some Honourable Members : Yes, Sir.

The Honourable Dr. B. R. Ambedkar : On Saturday evening, I think. So far as Mr. Naziruddin Ahmad is concerned, there are some forty amendments standing in his name.

Mr. Naziruddin Ahmad : Only twenty.

The Honourable Dr. B. R. Ambedkar : They cover the whole of List I. Therefore my submission is that the complaint, so far as he is individually concerned, that he did not have time, must be regarded as absolutely unfounded.

UNION LIST

ENTRY 1

***Mr. President :** You (Dr. P. S. Deshmukh) had not given notice of this amendment originally, not even in the first instance.

The Honourable Dr. B. R. Ambedkar : This is not an amendment to an amendment.

Mr. President : This is altogether a new amendment.

Dr. P. S. Deshmukh : I am moving this amendment on the same principle as that on which Dr. Ambedkar has been moving his amendments so far as the articles are concerned.

Mr. President : There was previously no notice of an amendment to entry 1. This is the first time we have an amendment to this entry.

Dr. P. S. Deshmukh : It is a fact. Sir. If Dr. Ambedkar feels that a rewording of this Entry is necessary, he might perhaps accept it; otherwise I am prepared to withdraw it.

The Honourable Dr. B. R. Ambedkar : This is merely a paraphrase of Entry 1. You have ruled that we should not spend more than five minutes on an Entry and it is already more than five minutes.

Mr. President : As Dr. Ambedkar has pointed out, this being merely a paraphrase of the Entry, we might leave it to him to consider. I do not

*CAD, Vol. IX, 29th August 1949, p. 722.

think we should have much discussion on these matters, especially when they do not happen to be new ideas.

[Entry 1 was added to the Union List.]

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ENTRY 2

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 2 of List I, the following entry be substituted.

'2. Central Bureau of Intelligence and Investigation.' "

The only words added are "and Investigation". Otherwise the entry is the same as it exists in the draft.

Shri Mahavir Tyagi: What is the significance of this addition ? Will you please throw light as to why you have added these words ?

The Honourable Dr. B. R. Ambedkar : The idea is this that at the Union office there should be a sort of Bureau which will collect all information with regard to any kind of crime that is being committed by people throughout the territory of India and also make an investigation as to whether the information that has been supplied to them is correct or not and thereby be able to inform the Provincial Governments as to what is going on in the different parts of India so that they might themselves be in a position to exercise their Police powers in a much better manner than they might be able to do otherwise and in the absence of such information.

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†**Mr. President :** Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I am not in a position to accept any of the amendments moved by my Friend Mr. Naziruddin Ahmad. These amendments seem to be the result of a muddled head

Mr. President : Dr. Ambedkar need not use strong language.

The Honourable Dr. B. R. Ambedkar : Amendment No. 146 seeks to remove the words 'and investigation'. The ground for removing the word 'investigation', as suggested by my Friend Mr. Naziruddin Ahmad, is that there would be conflict between the jurisdiction of the Centre and the Provinces. If that is how he understands the entry as I have moved it, I do not quite understand how he can consent to allow the word 'investigation' to remain in the two subsequent amendments which he has moved, numbers 147 and 148.

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*CAD, Vol. IX, 29th August 1949, p. 724.

†*Ibid.,* p. 726.

Mr. President : 147 only.

The Honourable Dr. B. R. Ambedkar : He has got another.

Mr. President : Amendment No. 148 has not been moved.

The Honourable Dr. B. R. Ambedkar : The point of the matter is, the word "investigation" here does not permit and will not permit the making of an investigation into a crime because that matter under the Criminal Procedure Code is left exclusively to a police officer. Police is exclusively a State subject; it has no place in the Union List. The word "investigation" therefore is intended to cover general enquiry for the purpose of finding out what is going on. This investigation is not investigation preparatory to the filing of a charge against an offender, which only a police officer under the Criminal Procedure Code can do.

[Entry 2, as amended by Dr. Ambedkar's amendment, was added to the Union List.]

ENTRY 3

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***The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move :

"That for entry 3 of List I, the following entry be substituted :—

'3. Preventive detention in the territory of India for reasons connected with defence, foreign affairs, or the security of India; persons subjected to such detention.' "

Comparing this entry with the original entry in the Draft Constitution, it will be noticed that there are only two changes : for the words 'external affairs' we have now used the words 'foreign affairs'. "Persons subjected to such detention" is an addition; this did not exist in entry 3 as it stands. But, this again has already been passed by the House in the amendment to the Government of India Act. Therefore, substantially, there is no change in the amendment that I am proposing.

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†The Honourable Dr. B. R. Ambedkar : In answer to the question put to me by my Friend Mr. Kamath I should like to tell him that there can be no provision for the externment of a citizen. There can be detention and not externment. The externment law can be applied only to aliens, and there is an entry in our list dealing with aliens etc. According to that, the State will be able to deal with an alien, if it wants to extern him.

Shri H. V. Kamath : Where is the entry in the list ?

*CAD, Vol. IX, 29th August 1949, p. 727.

†*Ibid.*, 729-730.

The Honourable Dr. B. R. Ambedkar : Entry No. 19. Now, with regard to the question put to me by my Friend Dr. Deshmukh, he wants that the words "for reasons connected with the State" should be substituted. In my judgment, that would be a limiting entry; and ours is a much better one as it specifies the subject-matter in connection with which the preventive detention may be ordered.

And then Mr. Brajeshwar Prasad wants public safety to be introduced.

Shri Brajeshwar Prasad : I did not want it. I only wanted to know whether the phrase "reasons connected with defence etc." included "public safety or interest."

The Honourable Dr. B. R. Ambedkar : Yes, "security of India" is a very wide term.

Shri Brajeshwar Prasad : I am not referring to "security of India" but to "public safety or interest".

The Honourable Dr. B. R. Ambedkar : Now, with regard to Mr. Naziruddin Ahmad's question, he wants the words "persons subjected to such detention" to be deleted.

Mr. President : No, he has not moved that amendment. He only wants to substitute the word "external" for the word "foreign".

The Honourable Dr. B. R. Ambedkar : We are hitherto using the word "foreign" throughout, and I think it is better we keep to the same word.

Shri H. V. Kamath : Is the security of India the same as the security of any part of it ? And is the present entry in consonance with article 275?

The Honourable Dr. B. R. Ambedkar : Yes, undoubtedly.

Mr. President : I shall put amendment No. 149 of Mr. Naziruddin Ahmad to vote.

[The amendment was negatived.]

Mr. President : Then I put Dr. Deshmukh's amendment.

[The amendment was also rejected.]

Mr. President : Then I put the entry as it was moved by Dr. Ambedkar.

[The amendment was adopted.]

UNION LIST

ENTRY 4

***Mr. President :** Then we come to entry 4.

*CAD, Vol. IX, 29th August 1949. p. 731.

The Honourable Dr. B. R. Ambedkar : I move :

"That for entry 4 of List I, the following entry be substituted :—

'4. Naval, military and air forces; any other armed forces of the Union.' "

Honourable Members will see that this entry was a very large entry, and it consisted of two parts. Part one of the entry related to the raising of the forces by the Union. Part two related to the forces of the States mentioned in Part III. In view of the fact that it has been decided to put the States in Part III on the same footing as the States in Part I, it is desirable to delete the second part of this entry. And so far as any States have today any forces, it would be provided for by a provision in the part dealing with the transitory provisions of this Constitution.

With regard to the first part of the entry, it is felt that it is a mouthful, and that many of the words are not necessary, and that the short phraseology now proposed—naval, military and air-forces—would be quite sufficient to give the Union all the powers that are necessary for the purposes of maintaining an army, navy and air-force.

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***The Honourable Dr. B. R. Ambedkar :** It is necessary to retain the words "any other armed forces of the Union" because, besides the regular army, there are certain other forces which come under the armed forces and which are maintained by the Centre. For instance, there are what are called the "Assam Rifles" to guard the border. There are certain armed police forces maintained by the Centre with regard to the certain Indian States. In order, therefore, to give them a legal basis, it is desirable to include them in this entry 4.1 might also mention mat they were also recognised in entry I of the Government of India Act, 1935 as distinct from the navel, military and air forces.

Mr. President : I shall put Sardar Hukam Singh's amendment to the House.

[The amendment was negatived.]

Mr. President : Then I put the entry moved by Dr. Ambedkar.

(The amendment was adopted. Entry 4, as amended, was added to the Union List.)

ENTRY 5

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†The Honourable Dr. B. R. Ambedkar : Sir, entry No. 5 should be read along with entry No. 64. Entry 64 deals with the control

*CAD, Vol. IX, 29th August 1949, p. 732.

† *Ibid.,* p. 733.

of industries which Parliament has declared to be necessary in the interests of the public. This, that is entry 5, relates to the taking over of industries for the purpose of defence or for the prosecution of the war. That being the important difference, I think it would hamper war effort considerably if entry 5 was made analogous to entry 64. Declaration by Parliament will be necessary in both cases. But the scope of entry 5 is much wider man that of entry 64. Having regard to the different ends and aims in view, it is sought to differentiate entry 5 from entry 64.

[Entry 5 was added to the Union List.]

ENTRY 6

(Entry 6 was added to the Union List.)

ENTRY 7

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 7 of List I, the following entry be substituted :—

'7. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of House accommodation (including the control of rents) in such areas.' "

There is an amendment to this standing in the name of my honourable Friend Mr. T.T. Krishnamachuri the effect of which is merely to omit the word "self" in the expression "local self-Government" so that it will read "local government".

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Shri Mahavir Tyagi : Sir, may I suggest that the entry be held over ?

The Honourable Dr. B. R. Ambedkar : Why 7 I do not understand. If you have any comments to make we are quite prepared to hear and give you a reply.

Shri Mahavir Tyagi : I feel that either we must be given a full chance of tabling our amendments and pulling our case before the House, or such articles as are controversial may please be ordered to be held over.

The Honourable Dr. B. R. Ambedkar : This amendment standing in the name of Mr. Sidhva has been there from 26th January! My friend has now become awake to the situation. There was plenty of time for him to give an amendment and I am even now prepared to say that he can make out his case for such changes as he wants and I am prepared to satisfy him.

*CAD, Vol. IX, 29th August 1949. p. 735.

Shri Mahavir Tyagi : Sir, we have accepted Dr. Ambedkar's speed—he is going very fast—we have taken no objection to that. But on items like these he might agree

The Honourable Dr. B. R. Ambedkar : Why don't you say what you want to say ?

Shri Mahavir Tyagi : My submission is that such items on which there are controversies or on which honourable Members say or feel that they want to table an important amendment, such items may please be held over. It will smooth the way, It will accelerate the work.

Mr. President : Then the House will adjourn till 9 o'clock tomorrow. We shall take all the amendments tomorrow as they come, but I shall not give any further time.

The Honourable Dr. B. R. Ambedkar : I am entirely in your hands, Sir, so far as this amendment is concerned. If I can know what objections my Friend Mr. Tyagi has, I am prepared to deal with his case now in the House.

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***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Sir, the amendments moved by my Friend Mr. Tyagi are the only amendments which call for reply. His amendments are in alternative form. In the first place, he wants to delete the whole part dealing with regulation of house accommodation including the control of rent. In his alternative amendment he is prepared to retain the control and regulation of house accommodation, but wishes to delete the words 'rent control'. It seems to me, the matter is really one of commonsense. If my Friend has no objection to the retention of the words "regulation of house accommodation", as is clear from his alternative amendment, then it seems to me that the control of rent is merely incidental to the power of regulation of house accommodation. It will be quite impossible to carry out the purpose, namely, of regulating house accommodation, if the authority which has got this power has not also the power to control rents. Therefore my submission is that the control of rents is incidental to the regulation of house accommodation. If Mr. Tyagi has no fundamental objection to the retention of the power to deal with house accommodation, I think he must not have any objection to the transfer of control also.

*CAD, Vol. IX, 29th August 1949, p. 739.

Mr. President : I will now put the amendments to vote. The first is that of Dr. Deshmukh.

Dr. P. S. Deshmukh : I will be content if the Drafting Committee will be pleased to consider it at the time of the final draft.

Mr. President : It is only a matter of drafting so far as I can see. So we might leve it to the Drafting Committee.

(The amendment was negatived.)

[Amendment of Dr. Ambedkar was alone adopted Entry 7 as amended was added to the Union List]

ENTRY 12

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***The Honourable Dr. B. R. Ambedkar :** Sir, there are various considerations which arise with regard to this amendment. As my honourable Friend, Mr. Kamath will see this is not the only entry which relates to foreign nations. There is, in the first place, an entry called Foreign Affairs which is broad-enough to be operated upon by this country if it wishes to establish itself as a member of any international organization. There is also the entry following, which we are dealing with now, which permits legislation relating to participation in any international conference or any international body. In view of that, I should have thought that the kind of amendment which has been moved by my honourable Friend, Mr. Kamath is really unnecessary. Secondly, it must be remembered that this is merely a legislative entry. It enables the State to make legislation with regard to any of the entries which are included in List I. If there was an article in the body of the Draft Constitution which limited the legislative power of the State given by any one of these entries, the question such as the one raised by my honourable Friend, Mr. Kamath would be very relevant, but I do not find that there is any limiting article in the Constitution itself which confines the legislative power given under this entry to the membership of the United Nations Organization and there is no such entry at all in the article. Therefore the State can act under any of the other items and be a member of any other international organization. But if the House is particular about it, I think no harm can be done if Mr. Kamath's amendment is accepted and therefore, I leave the matter to the House to decide.

[Entry 12 was added to the list]

*CAD, Vol. IX, 29th August 1949, p. 743.

NEW ENTRY 9-A

***Mr. President :** There is notice of one amendment by Prof. Shibban Lal Saksena for adding one more entry ; "Cosmic energy, and scientific and industrial research and other resources needed for its production, development and use."...

Would you like to move it. Mr. Shibban Lal Saksena ?

The Honourable Dr. B. R. Ambedkar : I do not know what it means.

Mr. President : We have atomic energy; he wants to have cosmic energy also.

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Prof. Shibban Lal Saksena : ... I hope Dr. Ambedkar will see that this lacuna is removed.

The Honourable Dr. B. R. Ambedkar : Sir, all I can say is that if the amendment moved by my Friend Prof. Shibban Lal Saksena is at all necessary, I think we have enough power under entry No. 91 of List I to deal with that : "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". That matter could be covered by this.

Mr. H. V. Kamath : That would cover many of the entries in the List itself.

(The motion was negatived.)

†Mr. President : Entry 14. Dr Ambedkar, would you like to say anything in reply ?

The Honourable Dr. B. R. Ambedkar : No elucidation is necessary.

(Entry No. 14 was added to the Union list.)

ENTRY 22

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 22 of List I, the following entry be substituted : —

'22. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.' "

The second part of this entry—"offences against the law of nations committed on land or the high seas or in the air" is new. It was an omission made in the earlier part of the draft. With regard to the first part, we are substituting the word "crimes" for "felonies and offences", as it is the common word used in India. "Felonies and offences" are English

*CAD. Vol. IX, 30th August 1949, p. 744.

†*Ibid.,* p. 745.

‡*Ibid.,* pp. 747-748.

technical terms. We are also taking out of the first part, the words, "against the law of nations" because piracies and crimes are matters which can be regulated by any country by reason of its own legal jurisdiction and authority. It has nothing to do with the law of nations.

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The Honourable Dr. B. R. Ambedkar : Sir, listening to what my honourable Friend Mr. Naziruddin Ahmad said, I am afraid I have again to say that he has not got a very clear notion of what this entry 22 proposes to do.

Mr. Naziruddin Ahmad : The difficulty was that Dr. Ambedkar was engaged in conversation and did not hear me.

The Honourable Dr. B. R. Ambedkar : I was no doubt engaged in conversation; but I was quite *avadhan* to what he was saying.

My Friend first posed the question as to why we should use the term "piracy and crime" in plural. Well, the other way in which we can use piracy and crime would be in collective terms. I think in matters of this sort, where criminal legislation is provided for, it is much better not to use the word in collective form. He cited some examples, but he forgets the fact that in some cases the generic use of the term is quite sufficient; in other cases it is not sufficient. The Drafting Committee, therefore, has deliberately used the word "piracies and crimes" in plural because it is appropriate in the context in which it is used.

My Friend Mr. Naziruddin Ahmad said as a second count against this entry that there ought to be a semi-colon after 'Piracies'. Now, that, I think, would distort the meaning and the purport of item 22. Supposing we had a semi-colon after 'piracies', 'piracies ' in item 22 would be dissociated from the rest of the entry. Now, if piracies are dissociated from the rest of the entries, it would mean that the centre would have the right to legislate on all piracies, including piracies in inland rivers also. It is not the intention of this entry to give to the Central Legislature the power to legislate on piracies of all sorts. The words "committed on high seas or in the air" are words which not only qualify the word "crime" but they are also intended to qualify the word "piracy".

Then, the third count of my friend was that we should omit the words "on land, on high seas and in the air" after the words "offences against the law of nations". That would not make it clear that the second entry is an all-pervasive entry and gives the power contrary to the first part of the entry to the Central Legislature to deal with offences against the law

*CAD, Vol. IX. 30th August 1949, pp. 750-751.

of nations, not merely on the high seas and is the air but also on land. In other words, the States will have no kind of power so far as the second part of the entry is conderned. I, therefore, submit that the entry as proposed carries the intention of the draftsman and no amendment is necessary.

Mr. Naziruddin Ahmad : The honourable Member has not heard me. What about offences committed against the law of nations, which is neither on land, nor on high seas, nor in the air, but in the low seas?

The Honourable Dr. B. R. Ambedkar : It can only be in his imagination, it cannot be anywhere else.

Sardar Hukam Singh (East Punjab : Sikh) **:** If piracies are not dissociated from the remaining items, then would these words 'in the air' also qualify the word 'piracy' ?

The Honourable Dr. B. R. Ambedkar : There may be piracies in the air also.

Mr. Naziruddin Ahmad : Piracies are always on water, never on land or in the air,

Mr. President : I will now put the amendments to vote.

Mr. Naziruddin Ahmad : I would like only the last one to be put to vote.

[Except the amendment of Dr. Ambedkar, other amendments were negatived Entry 22, as amended was added to the Union List.]

ENTRY 26

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 26 of List I the following be substituted :—

'26. Import or export across customs frontiers; definition of customs frontiers.' "

This is just a re-arrangement of the original entry.

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Mr. Naziruddin Ahmad : ...The word "and" in "import and export" in my amendment is most important. As I have said already this is more or less of a drafting nature and therefore I would leave it to the Drafting Committee to deal with it without having my motion put to the House.

The Honourable Dr. B. R. Ambedkar : Sir, I am content with clarity and I do not wish to run after elegance.

[The amendment was adopted. Entry 26, as amended, was added to the Union List.]

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*CAD, Vol. IX, 30th August 1949, p. 752.

ENTRY 26-A

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Prof. Shibban Lal Saksena : Sir, there have been cases in the Supreme Court of America on this subject and I would like it to be clearly stated. I would therefore like to move my amendment. Sir, I move :

"That after entry 26 of List I, the following new entry be added :—

* 26-A. Ownership of and dominion over the lands, minerals, and other things of value underlying the ocean seaward of the ordinary low watermark on the coast exceeding three nautical miles.' "

* * * * *

***The Honourable Dr. B. R. Ambedkar :** This matter is already covered, if I may say so, by article 271 A. My difficulty is : my friend Prof. Shibban Lal's amendment speaks of ownership. Now, in all these legislative lists, we only deal with power to make law, not power to appropriate. That is a matter which is regulated by another law, and not by legislative entries. I therefore cannot accept it.

Mr. President: He has referred to a judgment of the Supreme Court of the United States, but I think that is based on the absence of something like article 271-A of our Constitution.

The Honourable Dr. B. R. Ambedkar: We discovered that there was no entry and this was therefore a matter of doubt and in order to clear that doubt we put in 271 A. It is practically a *verbatim* reproduction of Mr. Shibban Lal's amendment.

ENTRY 31

†Mr. President : I find there are some amendments to entry 31.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 31 of List I the following entry be substituted :

'31. Highways declared to be national highways by or under law made by Parliament.' "

It is just transposition of words to make the matter clear.

[Entry 31, as amended, was added to the List]

ENTRY 37

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

** That in amendment 12 of List I, in entry 37, for the words 'by air or by sea' the words 'by railway, by sea or by air' be substituted".

This is just caused by an omission.

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*CAD, Vol. IX, 30th August 1949, pp. 753-754.

†*Ibid.,* p. 754.

‡*Ibid.,* p. 755.

Dr. P. S. Deshmukh : Sir, I beg to move :

"That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I. for the words 'by railway, by sea or by air' (proposed to be substituted), the words 'by land, sea or air' be substituted".

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***The Honourable Dr. B. R. Ambedkar :** Sir, I am afraid I cannot accept the amendment moved by Dr. Deshmukh, because if we include it, it will become a central subject.

Dr. P. S. Deshmukh : If it is between two provinces?

The Honourable Dr. B. R. Ambedkar : That will come under inter-State traffic.

Dr. P. S. Deshmukh : I am prepared to withdraw my amendment.

(The amendment ws, by leave of the Assembly, withdrawn.)

(Shri H. V. Kamath did not press his amendment.)

ENTRY 38

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 38 of List I, the following entry be substituted : — '38. Railways.' "

I think this change requires some explanation. If honourable Members will turn to entry 38 as it stands in the Draft Constitution, they will notice in the first place the distinction made between Union railways and minor railways. The distinction was necessary because, in respect of the Union railways, the Centre would have the authority to legislate with regard to safety, minimum and maximum rates and fares, etc. The responsibility of actual administration as carriers of goods and passengers, in respect of minor railways, was limited. In other words, so far as maximum and minimum rates and fares, station and service terminal charges etc. are concerned, they were taken out of the jurisdiction of the Central legislature. It is felt that it is desirable that, as the railway service is one uniform service throughout the territory of India, there should be a single legislative authority to deal with railways in all matters on a uniform basis. Consequently the entry in the First Part is now extended to all railways including minor railways. Again, as legislation is intended to be uniform, it is felt that it is unnecessary to retain the second part of the entry which makes a distinction between Union railways and minor railways. I might also say that this entry is purely a legislative entry. It is not an entry which deals with ownership. That means that even if the Centre had

*CAD, Vol. IX, 30th August 1949, p. 757.

†*Ibid.,* p. 757.

power to regulate minimum and maximum fares and rates and terminal charges, every State which owned a minor railway, whether it is a State in Part I or Part III, if it was the owner of the particular railway, would be entitled to receive and keep the proceeds of the rates and fares as may be fixed by the Centre. It does not affect the rights of ownership at all. They remain as they are. If the Centre wishes to acquire any minor railway now owned by any State either in Part I or Part III the Union will have to acquire it in the ordinary way. Therefore this is purely a legislative entry. The object of the amendment is to have a uniform law with respect to all matters dealing with railways and it does not affect any question of ownership at all.

The question of tramways is however separated from the question of railways. We propose in the Interpretation Clause to define railways in such a manner as to exclude tramways so that the States in Parts I and III will retain the power to regulate tramways in all respects as though they are not covered by 'railways'.

Shri R. K. Sidhva : There is a Minor Railways act which is worked by the Provincial Governments. May I know whether it is intended to repeal that Act and bring it into the Union ?

The Honourable Dr. B. R. Ambedkar : Yes, the Union will have power to abrogate that Act, make any other law or retain it if it so feels. It is only an enabling entry which will enable the centre either to make different laws regulating the major and minor railways or make one single law regulating all railways irrespective of whether they are major railways or minor railways.

Shri R. K. Sidhva : Then the minor railways will be governed by the Minor Railways Act ?

The Honourable Dr. B. R. Ambedkar : Yes, the existing law will continue until Parliament changes it. This is merely to give power to the Parliament to change it.

Mr. President : I would now put entry 38 to the vote. I am told there is an amendment which I have received this morning after nine. I am afraid I cannot accept it.

[Entry 38, as amended by Dr. Ambedkar's amendment, was added to the Union List.]

ENTRY 39

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 39 of List I. the following entry be substituted :—

*CAD, Vol. IX. 30th August 1949. p. 758.

'39. The institutions known on the date of commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memoraial, the Indian war Memorial, and any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.' "

The substance of the entry is the same as it exists at present, except for a few verbal changes which have taken place in the nomenclature of the institutions subsequent to the 15th August 1947.

Shri B. Das (Orissa : General) **:** When the Constitution comes into force, will the name "Imperial War Museum" be changed to "National War Museum" as "Imperial Library" has been changed to "National Library" ?

The Honourable Dr. B. R. Ambedkar : I understand that the "Imperial Library" has been changed to "National Library", but the Imperial War Museum retains its existing name. These descriptions are intended merely to identify the institutions, whenever Parliament wishes to make any law about them.

Shri B. Das : I want to know whether when the Constitution comes into force and the Adaptations are made, the word "Imperial" will go. I expect words like "His Majesty's Government", "The Crown" etc., will vanish.

Honourable Dr. B. R. Ambedkar : Adaptations will apply to laws and not to names.

Mr. President : This entry gives the right to the Central Legislature to change the names.

There is an amendment to this by Mr. Naziruddin Ahmad, No. 160.

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The Honourable Dr. B. R. Ambedkar : I do not think that much explanation is necessary as to why I cannot accept the amendment of Mr. Naziruddin Ahmad. As you will see the entry really falls into two parts. In the first part it deals with specific institutions which are enumerated therein. In the second part it deals with institutions which are either financed by the Government of India, wholly or in part. Therefore, it is not possible to use the words "similar" because that would circumscribe the object of the entry, which is to give the Central Government power to take over any institution which is either financed by itself or financed partly by itself and partly by the Provinces.

*CAD, Vol. IX, 30th August 1949, p. 760.

[Out of 3 amendments by Mr. Naziruddin Ahmed, 2 were not passed by him and one was rejected with Dr. Ambedkar's amendment, Entry 39 was added to the Union List.]

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ENTRY 40

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 40 of List I, the following entry be substituted :—

'40. The institutions known on the date of commencement of this Constitution as the benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance.' "

I submit the word "university" is a mistake and it ought to be "institution" and I hope you will permit me to substitute it.

There is no fundamental change in this except that the latter part permits also Parliament to take over any institution which it thinks is of national importance.

Dr. P. S. Deshmukh : May I suggest that 40-A may also be taken together ? It is part and parcel of the same thing.

The Honourable Dr. B. R. Ambedkar : Sir, I move :—

"That after entry 40 of List I the following new entry be inserted :—

'40A. Institutions for scientific or technical education financed by the government of India wholly or in part and declared by Parliament by law to be institutions of national importance.' "

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†The Honourable Dr. B. R. Ambedkar : Sir, I find my honourable Friends, Mr. Naziruddin Ahmad and Dr. Deshmukh, running at cross-purposes. One wants to enlarge the scope of the article by adding the word "academy". The other wants to limit the scope of the article by dropping the word "Delhi University and any other institution declared by Parliament by law to be an institution of national interest".

So far as Dr. Deshmukh's amendment is concerned, it seems to me quite unnecessary to introduce the word "academy" because the word 'institution' is large enough to include both University and academy. Therefore, that is quite unnecessary.

With regard to the amendment of my honourable friend Mr. Naziruddin Ahmad, Delhi University is as was pointed out by him already under the central Legislature by virtue of the fact that the Delhi University is in a commissioner's province, which is subject to the legislation of the centre. Therefore, in introducing the words "Delhi University" we are really not

*CAD, Vol. IX, 30th August 1949, p. 761.

†*Ibid.,* p. 767.

departing from the existing state of affairs. With regard to the subsequent part of the entry relating to any other institution declared b y law by Parliament, it seems to me, that it is desirable to retain those words, because there might be institutions which are of such importance from a cultural or from a national point of view and whose financial position may not be as sound as the position of any other institution and may require the help and assistance of the centre. In view of that, I think the last part of the entry is necessary and I am not prepared to accept his amendment.

Now with regard to my honourable friend, Mr. Kamath, he wanted to introduce the words "research institution". He has forgotten, or probably is attention has not been drawn to my amendment dealing with entry No. 57-A which deals with research institutions. Of course, that entry is limited to coordination and maintenance of standards. Mr. Kamath has, perhaps, in mind agencies established by the provinces and which it may be desirable for the Centre to take over. It seems to me that it is no use overloading the Centre with every kind of institution. It would be enough if, as I said, the provisions contained in 57A were allowed to pass because that will give the Centre enough power to maintain by law coordination and the maintenance of standards for higher education in scientific and technical institutions. I think that ought to suffice for the present.

Mr. President : I will now put the amendments.

(All 3 amendments were negatived.)

[Entry 40, as amended by Dr. Ambedkar's amendment, was added to the Union List.]

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ENTRY 41

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in entry 41 of List I for the words "and Zoological" the words "Zoological and Anthropological" be substituted."

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†**The Honourable Dr. B. R. Ambedkar :** The word "anthropological" is very wide and would cover even "ethnology".

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‡**The Honourable Dr. B. R. Ambedkar :** Sir, I am afraid my Friend Mr. Sidhva has drawn too much upon the altitude of neglect and indifference shown by the Central Government in the past towards geological surveys in India. I quite admit that hitherto this matter has been neglected

*CAD, Vol. IX, 30th August 1949, p. 769.

†*Ibid., p.* 769.

‡*Ibid., p.* 770.

by the Centre, but it does not follow from that that the provinces are going to take any more interest in geology than the Centre has taken hitherto.

First of all, this is a matter of very great magnitude involving a great deal of expense and I do not think that the provinces will be able to find the resources to develop the minerals which are to be found within their area. From that point of view I think there will be no advantage in transferring geology to the Concurrent List so as to give the provinces an opportunity to legislate about it.

The second difficulty I find in accepting his amendment is that we have in the Union List an entry stating that the mineral resources of India may be developed by the Centre. If Parliament were to make a law that the mineral development of the country shall be a central subject obviously there would be very great difficulty created in the way of Parliament executing that law or developing the mineral resources, if the provinces retained with themselves concurrent power of legislation. Therefore, my request to Mr. Sidhva is to allow the entry to remain as it is.

Mr. President : Then I put the amendments to vote. The first amendment moved by Mr. Kamath .....

Shri H. V. Kamath : As Dr. Ambedkar assures me that the word "anthropological" includes the word "ethnological", I accept his superior wisdom and won't press the amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : Then Mr. Sidhva's amendment..

Shri R. K. Sidhva : In view of the assurance given, I beg leave to withdraw the amendment.

(The amendment was by leave of the Assembly, withdrawn.)

(The amendment of Dr. Ambedkar was adopted.)

[Entry 41, as amended, was added to the Union List.]

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ENTRY 43

***Mr. President:** Now we take up entry 43. Dr. Ambedkar has to move an amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 43 of List I. the following entry be substituted :

'43. Acquisition or requisitioning of property for the purposes of the Union.' "

Members will see that the original entry as it stood had other words along with it, namely, the principles of compensation etc. Those words, it is proposed to put in a separate entry in the Concurrent List. So it is

*CAD, Vol. IX, 30th August 1949. pp. 771-772.

unnecessary to retain those words here. That entry will be entry 35 in the Concurrent List.

Shri Syamanandan Sahaya (Bihar : General) **:** Sir, I want to make a suggestion.

Mr. President : Just wait a little. There is an amendment to be moved.

Shri Syamanandan Sahaya : I want to make it before the amendment is moved. This item on the list which is proposed by Dr. Ambedkar will have a deal to do with the language of article 24 and I suggest therefore that this item be held over till we have passed article 24....

The Honourable Dr. B. R. Ambedkar : I submit that is unnecessary because the power to lay down principles in any case will have to be given to the legislature. The question is whether the centre; should have a separate entry and the Province should have a separate entry for laying down principles of acquisition. What is proposed is this, that for both Centre as well as the provinces, there should be a commmon entry in the Concurrent List. Therefore, whatever happens to article 24, this entry regarding principles will have to be put in somewhere. Unless my friend has any objection to putting the matter in the concurrent List, there is no object served by postponing the consideration of this entry.

Shri Syamanandan Sahaya : I was thinking of a case where even in the matter of acquisition by States the principle may have to be decided by the Central Parliament.

The Honourable Dr. B. R. Ambedkar : That is exactly the point. If my friend would understand it, if we put it in the Concurrent List, the Centre also will have power.

Shri Syamanandan Sahaya : Precisely, but you say that the "Centre also will have". My submission is

The Honourable Dr. B. R. Ambedkar : What I am saying is this : that we are cutting out the words "principles" etc. and putting them in entry 35 of the Concurrent List. If my friend will refer to the two entries, 43 in the Union List and 9 in the State List he will rind both of them are exactly in the same terms. In other words, both of them not only give the power to compulsorily acquire property but also give the power to lay down principles. Instead of distributing the entry regarding principles between the Centre and the provinces independently of each other, it is now proposed to take out those words "principles" etc., and put them in entry 35 of the Concurrent List.

Prof. Shiban Lal Saksena : Would there be any harm if the thing is postponed until the other article is passed ?

The Honourable Dr. B. R. Ambedkar : No good will be served by postponing. I am not in favour of having these things postponed. There is already so much time taken in the consideration of this matter.

Dr. P. S. Deshmukh : Sir, I move :

"That in amendment No. 21 of List I (Sixth Week), in the proposed entry 43 of List I, after the words "of property" the words 'according to law of the Union' be inserted."

...I therefore, hope that the amendment proposed by me which specifies that any acquisition or requisitioning of property shall be by law passed by the Parliament and shall not be undertaken arbitrarily will be accepted.

The Honourable Dr. B. R. Ambedkar : It is quite unnecessary. These entries do deal with legislative power. What is the use of adding the words 'according to the law of the Union' ? According to the entry as it is, the Union will have the power to make the law. It cannot mean anything else.

Dr. P. S. Deshmukh : I beg leave to withdraw my amendment.

[The amendment was, by leave of the Assembly, withdrawn. Entry 43, as amended, by Dr. Ambedkar's amendment was added to the Union List.]

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ENTRY 50

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***Shri Jagat Narain Lal :** ...This will make the meaning quite clear. There will be no ambiguity. I suggest this to Shri T.T. Krishnamachari. The object they have in view can be achieved by adopting my suggestion.

The Honourable Dr. B. R. Ambedkar: I will consider the matter. For the present the entry proposed by Shri T. T. Krishnamachari may go in.

[The following amendment of Mr. Krishnamachari was adopted.]

Mr. President : *The* question is.

"That for entry 50 of List I, the following entries be substituted :—

'50. The incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

50-A. The incorporation, regulation and winding up of corporations, whether trading or not with objects not confined to one State but not including universities'."

[Entries 50 and 50-A were added to the Union List.]

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ENTRY 52

†**The Honourable Dr. B. R. Ambedkar :** I move :

"That for entry 52 of List I, the following entry be substituted :—

*CAD, Vol. IX, 30th August 1949, pp. 773-774.

†*Ibid.,* p. 774

'52. Constitution and organisation of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practice before the Supreme Court or any High Court'."

The last words are additions. It is found necessary to have them because the time has come when it is necessary to regulate the right to practise of persons practising in both the High Court and the Supreme Court.

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***The Honourable Dr. B. R. Ambedkar :** I do not wish to interrupt the debate, but I would like to point out that we have already passed articles 192A, 193. 197, 201 and 207 which deal with the constitution of the High Courts. Under these-articles, except for pecuniary jurisdiction, the whole of the High Courts are placed, so far as their Constitution, organisation and territorial jurisdiction are concerned in the centre. It seems to me, therefore, that this amendment is out of order.

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†Mr. Naziruddin Ahmad :...The original entry dealt with the Supreme Court only. In the new entry proposed by Dr. Ambedkar, it reads : "Constitution and organisation of the Supreme Court and the High Courts;" Then again, he has added "persons entitled to practise before the Supreme Court or any High Court".

My first objection is as to the surreptitious manner in which important things are interpolated into the entries. I could have well understood...

(Interruption).

Shri Mahavir Tyagi : On a point of order, Sir, is the word "surreptitiously" parliamentary ?

†The Honourable Dr. B. R. Ambedkar : Is it a proper argument, Sir, to say that the Drafting Committee has surreptitiously tried to introduce something ? My honourable friend is entitled to ask me an explanation as to why I have altered the entry. There is nothing surreptitious. I am perfectly prepared to justify every item and every part of it.

Shri Mahavir Tyagi : I want your ruling, Sir, is the word "surreptitiously" parliamentary ?

Mr. President : I confess I am not acquainted with parliamentary practice to such an extent as to say whether 'surreptitiously' is or is not parliamentary. I would ask the honourable Member not to use expressions which may be offensive.

Mr. Naziruddin Ahmad : I bow down to your ruling, Sir....

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*CAD, Vol. IX, 30th August 1949, p. 775.

†*Ibid.,* p. 778.

***Shri T. T. Krishnamachari :** The attention of the Members of the House has already been drawn by Dr. Ambedkar to article 207. May I say, Sir, in view of that that the honourable Member need not labour this point ?

The Honourable Dr. B. R. Ambedkar : I can reply. I want only ten minutes. I have understood what he wants to say.

Mr. Naziruddin Ahmad : There is a promise to reply but it would be an unusually fortunate thing for me actually to get a reply from Dr. Ambedkar.... This is too important a matter to b e lightly dealt with. I submit that if we assume that the drafting Committee is entitled to do whatever it likes, then of course I am entirely out of court. I feel I am faced with certain defeat irrespective of reason.

The Honourable Dr. B. R. Ambedkar : Sir, I am constrained to begin by stating that I have on very many occasions noted that my friend Mr. Naziruddin Ahmad has got into the habit of speaking of the drafting Committee in most derisive terms. I have not descended to his level in order to reply to him, but I should like to give him a warning that if he persists in doing this kind of thing, I shall certainly not fail to pay him in the same coin.

Mr. Naziruddin Ahmad : Are members to be threatened in this manner ? Of course it produces no effect on me.

The Honourable Dr. B. R. Ambedkar : This is not a threat. This is a warning.

Now coming to the points raised by my friend Dr. Panjabrao Deshmukh, I am very sorry that I cannot accept his suggestion. Because he wants to enlarge entry 52 in such a manner and to such a magnitude as to include every court in this country. It is an impossible proposition and I am afraid I cannot accept it.

I shall now deal with the arguments of my Friend Mr. Naziruddin Ahmad. First of all, he said that we were trying to smuggle in the High Court in this entry 52, because it did not find a place in the entry as it stood before. The House will remember that the Drafting Committee has been from time to time revising not only the entries but also the articles. I am not here to claim any omniscience on the part of the Drafting Committee. If the Drafting Commmittee has failed to grasp the whole thing at one grasp, I am not prepared to blame the Drafting Committee nor am I prepared to allow anybody to sit in judgment over it and pass censure upon the Drafting Committee. It is a huge task and we are bound to go slowly on our way.

Shri H. V. Kamath : Cannot the House sit in judgment on the Drafting Committee ?

*CAD, Vol. IX, 30th August 1949, pp. 780-782.

The Honourable Dr. B. R. Ambedkar : But the House should recognise what I am saying *viz.,* that it is not possible for the Drafting Committee to bringforth before the House a neat and complete formula which will not require reconsideration. Now Sir, my friend said that we have brought in the High Courts. Well, we have deliberately brought in the High Courts because we felt that it was necessary lo bring in High Courts in view of certain articles that we have already passed. My Friend, Mr. Naziruddin Ahmad, evidently forgot articles 192A, 193, 197,201 and 207 which deal with the High Courts and if he were patiently to apply his mind to these articles, he will find that the only matter that is left to the Provincial Legislatures is to fix jurisdiction of the High Courts in a pecuniary way or with regard to the subject matter. The rest of the High Court is placed within the jurisdiction of the Centre. Obviously when considering entries in the Union List which are meant to give complete power to the Centre, we were bound to make good this lacuna and to bring in the High Courts which, as I said, by virtue of these articles excepting for two cases have been completely placed within the purview of the Parliament. There is nothing surreptitious about it. This is merely correcting and error which originally crept in by reason of the fact that the article and entry were not properly composed. That is the reason why High Courts have been brought in.

Coming to the question as to why we have brought in the entry—Persons entitled to practice before the Supreme Court and the High Court—the position has been already explained by my friend Mr. Alladi Krishnaswami Ayyar ; but I will put the same matter very shortly, and it is this that, really speaking, there is nothing very extraordinary in bringing in these words— persons entitled to practice before Supreme Court or High Court—as Members will see article 121 which gives Parliament the power to make any law with regard to persons practising before the Supreme Court. Therefore, that power is already there and there is nothing new so far as the entry refers to persons entitled to practise before the Supreme Court.

Now with regard to the High Court, the position is this. The power which the Centre have today is contained in entry 17 of the Concurrent List which deals with professions, and legal profession is one of the professions. It is, therefore, perfectly possible for Parliament to enact a taw regulating the practice of persons appearing in the High Court by virtue of the power given to it by entry 17 which is in the Concurrent List, but the trouble with that is this. Concurrent List means that both parties can legislate. The Centre can legislate and the provinces can legislate and the legislation may be not quite in consonance with each oilier. Consequently it was fell that while leaving entry 17 as it is in the Concurrent List lo cover all professions,

to pick out a part of the legal profession and to put it here so as to make any legislation with regard to legal profession in so far as it relates to practice of persons before High Courts an exclusive subject for legislation by the Centre, and the reason why we did it was because of the hard cases referred to by my friend Mr. Alladi Krishnaswami Ayyar and I may repeat one of them. Probably you have not heard what he said. Supposing, for instance, a lawyer or a barrister from Madras appears in a case in the Supreme Court and the Supreme Court instead of deciding the case remanded the case to Bombay High Court. What happens ? The Bombay Government or Bombay law if enacted under entry 17 may not permit a person from Madras to appear in the Bombay High Court, with the result that one Madras, Lawyer who appeared in the Supreme Court conducted the whole case but if the case is remitted back to the High Court of Bombay, that High Court may by law prevent him from appearing before it. I think it will be agreed that is a great hardship. In order therefore to have a uniform position with regard to persons practising in different High Courts what this entry proposes to do is to cut it from entry 17 dealing with professions and to put it here so that the practice of persons appearing in the High Court may be regulted by uniform law. There is nothing revolutionary and there is nothing surreptitious in entry 52 as is proposed by the Drafting Committee.

Mr. President : I will now put the amendments to vote.

(All amendments except that of Dr. Ambedkar as given before, were rejected.)

[Entry 52 as amended was added to the Union List]

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ENTRY 53

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Sir, I move :

> "That in Entry 53 of List I, the words and the figure 'except the States for the time being specified in Part III of the First Schedule' be omitted."

This is because we propose to make no distinction between a State in Part I and Part III.

Shri H. V. Kamath (C.P. & Berar : General) **:** There is a little amendment of mine, No. 198. Sir, I move :

> "That with reference to amendment No. 25 of List I (Sixth Week), in entry 53 of List I, for the words and exclusion of the jurisdiction of any such High Court from, the words ' and exclusion from the jurisdiction of any such High Court of be substituted."

*CAD, Vol. IX, 31st August 1949, pp. 783-784.

This is only an interposition of words, I know, but it changes the meaning slightly and brings out what is intended in the entry. I believe that this entry has reference to exclusion from the jurisdiction of any High Court of certain areas....

The Honourable Dr. B. R. Ambedkar : Sir, Mr. Kamath's amendment is wholly unnecessary because the object of my amendment is to delete altogether that portion of entry No. 53 beginning from "except" to the end. If I was retaining any part of the entry then of course the question might arise whether the phraseology used in the entry is better than the one suggested by Mr. Kamath or *vice versa.*

Shri H. V. Kamath : My amendment has reference to the entry itself not to the amendment.

The Honourable Dr. B. R. Ambedkar : I think that cannot arise because I am omitting the whole thing. The second point is that the language used in entry 53 has to be in keeping with the language employed in article 207.

Shri H. V. Kamath : If this is accepted the language in the other article which has already been passed will have to be amended—at the third reading.

Mr. President : I find that Dr. Ambedkar's amendment refers only to a part of this entry.

The Honourable Dr. B. R. Ambedkar : I am taking out the last part "except the States for the time being specified in Part III of the First Schedule". The entry as amended would stand:

"Extension of the jurisdiction or of a High Court having its principal seat in any State within the territory of India to and exclusion of the jurisdiction of any such High Court from, any area outside that State."

The entry merely provides for the extension or the exclusion of the jurisdiction.

Shri H. V. Kamath : My amendment refers to the second part, "exclusion of the jurisdiction of any such High Court from any area outside that State".

The Honourable Dr. B. R. Ambedkar : I am not accepting your quibbling.

Shri H. V. Kamath : It is no quibble. It is a question of correct English.

The Honourable Dr. B. R. Ambedkar : If it is a matter of mere English we can take it up at the next stage.

Mr. President : Then I shall put Mr. Kamath's amendment to vote.

(The amendment was negatived.)

Mr. President : I shall now put Dr. Ambedkar's amendment to vote.

(The amendment was adopted.)

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ENTRY 56

The Honourable Dr. B. R. Ambedkar : I move :

"That for entry 56 of List I the following entry be substituted :—

'56. Inquiries, surveys and statistics for the purpose of any of the matters in this List

There is hardly any difference. We have merely made it "for the purpose of any of the matters in this List".

Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** Though my amendment No. 167 will improve the text, I do not want to move it.

(Amendment No. 254 was not moved.)

Shri Phool Singh (United Provinces: General)**:** Mr. President, Sir, the amendment suggested by Dr. Ambedkar will limit the scope of this entry...,With these few words 1 request Dr. Ambedkar to reconsider the situation.

The Honourable Dr. B. R. Ambedkar : Sir, I think the fear expressed by my friend is somewhat groundless and arises from the fact that he has not adverted to the fact that all other inquiries and so on relating to the States, and other matters, are now put in the Concurrent List. So there is no absence of any such purpose that he wants.

(Entry 56, as amended, was added to the Union List.)

ENTRY 51

†**The Honourable Dr. B.R. Ambedkar :** Sir, I move :

"That for entry 57 of List I, the following be substituted :

'57. Union agencies and Union institutes for the following purposes, that is to say, for research, for professional, vocational or technical trining, for scientific or technical assistance in the investigation or detection of crime, for the training of police officers, or for the promotion of special studies'."

The entry is somewhat enlarged by the introduction of the words "vocational training" and "investigation or detection or crime, for the training of police officers" and so on.

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‡ **Mr. President :** There is an amendment to this entry 57, standing in the name of Mr. Karimuddin (No. 3544). As it is not being moved. Dr. Ambedkar may reply.

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*CAD, Vol. IX, 31st August 1949, pp. 784-785.

†*Ibid.,* p. 785.

‡*Ibid.,* pp. 787-788

The Honourable Dr. B. R. Ambedkar : Mr. President, I have compared the amendments moved by my honourable Friend Mr. Kamath with the entry as proposed by me. I think except for one matter, it will be quite open to Central Government to carry out the purpose which my honourable Friend Mr. Kamath has in mind. The only thing which the Central Government will not be able to effectuate under entry 57 is spiritual research. I do not think that this House, knowing full well the various problems with which the Central Government has to carry on these days, would like to burden it with any such agency as spiritual research. The rest of the objects of the amendment will be covered by entry 57.

Shri H. V. Kamath : How do you say that the administrative service officers are covered by the entry as proposed ?

The Honourable Dr. B. R. Ambedkar : I think so, because the training is not only for police officers. The language used is "research, for professional, vocational or technical training". Anything can be brought in under the above.

* * * * *

Mr. President : I will now put the entry as moved by Dr. Ambedkar in the amended form. The question is :

"That for entry 57 of List I, the following entry be substituted :

'57. Union agencies and Union institutes for the following purposes, that is to say, for research, for professional, vocational or technical training, for scientific or technical assistance in the investigation or detection of crime, for the training of police officers, or for the promotion of special studies'."

(The amendment was adopted.)

(Entry 57, as amended, was added to the Union List.)

ENTRY 57(A)—(*contd.*)

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 57 of List I, the following new entry be inserted :—

"57A. Co-ordination and maintenance of standards in institutions for higher education scientific and technical institutions and institutions for research'."

This entry is merely complementary to the earlier entry, No. 57. In dealing with institutions maintained by the provinces, entry 57-A proposes to give power to the Centre to the limited extent of co-ordinating the research institutions and of maintaining the standards in those institutions to prevent their being lowered.

Sir, I also move :

"That in amendment No. 28 of List I (Sixth Week), in the proposed new entry 57A of List I, for the word 'maintenance' the word 'determination' be substituted."

*CAD, Vol. IX, 31st August 1949, p. 788.

***Shri Basanta Kumar Das** (West Bengal : General) **:** I have an amendment No. 29.

Mr. Vice-President : I thought they were new articles. Dr. Ambedkar, would you prefer that to be moved before you speak ?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. Vice-President : Mr. Das, you may move No. 29.

* * * * *

†The Honourable Dr. B. R. Ambedkar : Mr. President Sir, I think there is a certain amount of admixture made by my friends who have spoken on this entry 57A. So far as I have been able to gather, their contention is that this entry 57A should be allowed only if mere was some grant made by the Central Government to the Provinces. It seems to me quite unnecessary to mix up the two matters. The question of grants from the centre to the Provinces has been dealt with in, two separate articles— 255 and 262. Article 255 provides for grants to be made by the centre to the Provinces for assistance—

> "Such sums, as Parliament may by law provide, shall he charged on the Consolidated Fund of India in each year as grants-in-aid of the Consolidated Fund of such States as Parliament may determine to be in need of assistance ..."

Therefore, the provision for supporting the States by way of financial help is already there in article 255.1 should also like to draw the attention of the Members of the House to another important article, which is article 262, which is much wider in scope. It says—

> "The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws."

As the House will see, it has a much wider scope. It says that although a subject may not be within List I, none-the-less, Parliament would be free to make a grant. Therefore, this question having been dealt with separately, I think there is no necessity to mix it up with entry 57A.

Entry 57A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "Why this entry ?" I shall show why it is necessary. Take for instance the B.A. Degree examination which is conducted by the different Universities in India. Now, most Provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the

*CAD, Vol. IX. 31st August 1949, p. 793.

†*Ibid*., p. 796.

B. A. Examination, if he obtained 15 per cent of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20 per cent of marks shall be deemed to have passed the B.A. Degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the central purposes, for all-India purposes or the purposes of the State.

Consequently, apart from the question of financial aid, it is absolutely essential, both in the interest of the centre as well as in the interests of the Provinces that the standards ought to be maintained on an all-India basis. That is the purpose of this entry and in my judgment it is a very important and salutary provision, in view of the fact that there are many provinces who are in a hurry to establish research institutes or establish universities or lightly to lower their standards in order to give the impression to the world at large that they are producing much better results than they did before.

Dr. P. S. Deshmukh : Is it the government's intention to fix the percentages and marks for passes ?

The Honourable Dr. B. R. Ambedkar : They may do so. It is up to government to maintain the standard by any means which they think proper. I can not say what a government may do.

[Amendment moved by Shri B. K. Das were withdrawn. Dr. Ambedkar's motion was adopted, Entry 57-A was added to the union List.]

ENTRY 58

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 58 of List I, the following entry be substituted : —

'58. Union Public Services. All-India Services : Union Public Service Commission.' "

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†The Honourable Dr. B. R. Ambedkar : With regard to the amendment of my Friend Dr. Punjabrao Deshmukh requiring the deletion of All-India services, it is not possible to accept that for the simple reason that

*CAD, Vol. IX, 31st August 1949. p. 797.

†*Ibid.,* pp. 798-799.

heretofore the All-India services and the regulation thereof did not figure in the Government of India Act because that was a matter which was kept exclusively in the hands of the Secretary of State. The Secretary of Stale having disappeared, it is necessary to provide for the regulation of the all-India services, somewhere by some agency, in the Constitution and the most appropriate agency therefore is the Centre. List I deals with matters which are within the purview of the Centre. The natural place for All-India services is therefore in list I. That is one argument.

The second argument is this that there are already two sorts of All-India services at present in existence. There are the remnants of the old I.C.S. still continuing lo serve the Government of India. Secondly, there have been in stituted during the course of the last two years what are called the All-India Administrative Service and the All-India Police Service. Whether the Centre continue lo recruit civil servants on the basis of the All-India administrative Service or the All-India Police Service is a matter which has to be determined in the course of a subsequent article with which we will be concerned. But there is no doubt about it that these services have been brought into existence with the consent of the Provinces. Secondly, they being there, it is necessary to make provision for their regulation. And I submit that the Union List is the proper list where this provision can be made.

With regard to my Friend Mr. Kamath's suggestion that the Joint Commission should be mentioned in this entry, my submission is that on a deeper consideration that would create complications. The Joint Commission, so far as its constitution, the appointment of its members and their removal are concerned—and only in these three respects—is an All-India subject, and provision for these three matters is already made in article 284. In all other respects it is really a State Public Service Commission: say, for instance, for the purpose of excluding certain services or consulting them in certain matters, it will still be a State Public Service Commission. And it is not desirable to oust the jurisdiction of the Slates in these matters as would be the consequence if the Joint Commission was also mentioned in entry 58. It is for that purpose that I object to Mr. Kamath's proposal.

Shri H. V. Kamath : May I know if this will go lo the Concurrent List ?

The Honourable Dr. B. R. Ambedkar : No.

Shri H. V. Kamath : Where will it go ?

The Honourable Dr. B. R. Ambedkar : It can be the Centre only in certain respects : for instance, if the States jointly say that a Joint Public

Service Commission should be constituted, then as a result of the resolution the Centre gets jurisdiction and not otherwise. In all fundamental matters, it is distributively, if I may say so, a State Public Service Commission.

Dr. P. S. Deshmukh : I beg leave to withdraw my amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : I shall put Mr. Kamath's amendment to vote.

[It was withdrawn. Dr. Ambedkar 's amendment was carried. Entry 58, as amended, was added to the Union List.]

ENTRY 58-A

***The Honourable Dr. B. R. Ambedkar :** I move :

"That after entry 58 of List I, the following entry be inserted :

'58-A. Union pensions, that is to say, pensions payable by the Government of India or cut of the Consolidated Fund of India'."

This entry did not exist in the draft. We felt it necessary to have such an entry as a measure of caution.

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The Honourable Dr. B. R. Ambedkar : I do not think that the amendment suggested by my Friend Dr. Deshmukh is any improvement or has any substantial difference from the amendment as I have moved. The difference that is sought to be made is this that there may be certain pensions which may be payable out of the Consolidated Fund of India, which means out of the proceeds of taxes. It may be perfectly possible for the Government of India to institute pensions which are of a contributory character in which case the burden may not be on the Consolidated Fund but on the person who has already contributed to a Fund. That is the distinction. And that is why the entry has been worded in the way I have worded it.

Dr. P. S. Deshmukh : I would like to withdraw my amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

[The motion of Dr. Ambedkar was adopted and Entry 58A wax added to the Union List.]

ENTRY 60

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :—

"That for entry 60 of List I, the following entry be substituted :—

'60 Ancient and Historical Monuments and records declared by Parliament by law to be of national importance'."

*CAD, Vol. IX, 31st August 1949, pp. 799-801.

†*Ibid.,* p. 800.

The rest of the entry as it originally stood, namely, "archaeological sites and remains" is proposed to be transferred to the Concurrent List.

Shri H. V. Kamath : ... I think Dr. Ambedkar has advanced no cogent reasons for changing the language of article 39 which is sought to be embodied now in this entry. I therefore move amendment No. 206 and commend it to the House for its acceptance.

Mr. President : Would you like to say anything on amendment No. 206 ?

The Honourable Dr. B. R. Ambedkar : No Sir, it is quite unnecessary to say anything on this subject.

Mr. President : Then I will put the amendment moved by Mr. Kamath to vole

[The amendment was negatived. The motion of Dr. Ambedkar was adopted and Entry 60, as amended, was added to the Union List]

Prof. Shibban Lal Saksena : Sir, may I be permitted to move my amendments ? -

Mr. President : You were not here when I called them out. I am sorry it is too late now.

Prof. Shibban Lal Saksena : They are very important amendments, Sir, and I think they are independent also.

The Honourable Dr. B. R. Ambedkar : You have no equity in your favour.

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ENTRY 61

***Mr. President :** Let me finish the List and then we shall see. Now, entry No. 61. There is an amendment in the Printed List, of which notice is given by Dr. Ambedkar. No. 3548.

The Honourable Dr. B. R. Ambedkar : Sir, I am not moving that.

Mr. President : Then there are two amendments in the name of Mr. Santhanam.

The Honourable Shri K. Santhanam : I am not moving them.

Mr. President : Then I put Entry No. 61 to vote.

(Entry 61 was added to the Union List.)

*CAD, Vol. IX, 31st August 1949, p. 802.

ENTRY 61-A

The Honourable Dr. B. R. Ambedkar : I move :

"That after entry 61 of List I, the following entry he inserted :—

'61-A. Establishment of standards of quality for goods to be exported across customs, frontier or transported from one Slate to another'."

We have already got entry 61 which deals with standard of weights and measures and it is felt that there ought to he a provision for establishment of standards of quality for goods.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, the point raised by my Friend Dr. Deshmukh might well be raised when we discuss the entries in List II. They are matters within the jurisdiction of the States. We are dealing here only with List I, which is intended to circumscribe the power of the centre so as not to interfere with the internal affairs of the States. Consequently the entry has been worded in a very cautious manner. As my Friend will see, the entry speaks of standards of goods to be transported from one State to another. In regard to these it is not intendd to give the centre power to interfere with the administration of the States. If he wants to raise this question he may do so when we discuss the State List. ?

Dr. P. S. Deshmukh : May I suggest that this entry might be held over and the Agricultural Ministry consulted before we finalise this List ?

The Honourable Dr. B. R. Ambedkar : When we come to List II, we can discuss the matter.

Mr. President : I will put the amendments to vote.

(The amendments of Dr. Deshmukh were negatived.)

Mr. President : I shall now put the new entry 61-A to vote.

(The motion of Dr. Ambedkar was put to vote.)

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‡**Shri V. S. Sarwate :** I would like to know from Dr. Ambedkar what the meaning of the term 'exported across customs frontier' is ?

Mr. President : I am afraid the questions comes too late, after the voting has taken place.

The Honourable Dr. B. R. Ambedkar : I will explain it to the honourable Member if he will come to me afterwards.

Mr. President : The question has been put.

The motion was adopted. Entry 61-A was added to the Union List.

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*CAD, Vol. IX, 31st August 1949, p.802.

†*Ibid.,* p. 803.

‡*Ibid.,* p. 804.

ENTRY 63

***Mr. President :** ... We may now take up entry 63.

The Honourable Dr. B. R. Ambedkar : Mr. President, I am not moving amendment No. 3551 to the original entry. In regard to amendment 34 which I am moving I shall in doing so incorporate in it amendment No. 212 also. Sir, I move :

"That for entry 63 of List I, the following entry be substituted :—

'63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to he dangerously inflammable'."

* * * * *

†The Honourable Dr. B. R. Ambedkar : I do not think that either of these two amendments is necessary. The purpose which my Friend's Professor Shibban Lai Saksena has in view, *viz,,* that entry 63 should also permit the centre to regulate prospecting for oil, etc., would be served by the words we have used "Regulation and development". With regard to the addition of the word "corrosive", I think it is not necessary to have any such power at all.

[With the lone amendment by Dr. Ambedkar, Entry 63 was added to the Union List.]

ENTRY 64

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 64 of List I, the following entry be substituted :—

'64. Industries, the control of which by the Union is declared by Parliament by law to be expendient in the Public interest'."

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@The Honourable Dr. B. R. Ambedkar : Sir, the entry as it stands is perfectly all right and carries out the intention that the drafting Committee has in mind. My submission is that once the Centre obtained jurisdiction over any particular industry as provided for in this entry, that industry becomes subject to the jurisdiction of Parliament in all its aspects, not merely development but it may be in other aspects. Consequently, we have thought that the best thing is to put the industries first so as to give undoubted jurisdiction to Parliament to deal with it in any manner it likes, not necessarily development. Therefore, the entry is far wider than Mr. Kamath intends it to be.

[Two amendments were rejected Dr. Ambedkar's above motion was adopted, Entry 64, as amended was added to the Union List.]

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*CAD, Vol. IX, 31st August 1949, pp. 804.

†*Ibid.,* p. 805.

‡ *Ibid.,* p. 806.

@ *Ibid,* p. 807.

ENTRY 64-A

***The Honourable Dr. B. R. Ambedkar :** Sir, with regard to the amendment to have a new entry 64A. I may say that this matter was placed before the Premiers' Conference and the Premiers' Conference did not agree to the proposal.

With regard to the question of distribution of food, we have provided in article 206, that for a period of live years, the Centre may have control over the distribution of food.

With regard to the second amendment, namely, the introduction of the new entry 64B...

Mr. President : That has not been moved.

The Honourable Dr. B. R. Ambedkar : Sir, I cannot accept the amendment moved.

Mr. President : I shall put the amendment to vote. The question is :

"That after entry 64 of List I, the following new entry be added :—

'64-A, Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food.' "

(The amendment was negatived.)

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†**The Honourble Dr. B. R. Ambedkar :** With regard to the first part of the amendment, there is the proposal of the Drafting Committee to put this matter in the Concurrent List, and if my Friend Prof. Saksena were to examine the Concurrent List, he will find that there is an entry corresponding to entry 64B, *(a)* in entry 35A of the concurrent List.

With regard to *(b)* it is a matter of controversy and the Drafting Committee has not yet come to any conclusion on the question. The Drafting Committee feels that *(a)* is a perfectly logical consequence of the power which we have already given to Parliament to declare certain industries of national importance. If Parliament has the power to declare certain industries to be of national importance, then Parliament should also have the power to regulate the goods and the products of such industries. But *(b)* is about goods of industries other than those declared by Parliament to be of national importance. As I said, that is a matter of some controversy and the Drafting Committee has not come to any conclusion. I suggest Prof. Saksena may allow the matter to stand over till we reach entry 35 in the Concurrent List.

Prof. Shibban Lal Saksena : I have no objection to waiting.

Mr. President : Then it is held over.

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*CAD, Vol. IX, 31st August 1949, pp. 809-810.

†*Ibid.,* p. 811.

ENTRY 65

* * * * *

The Honourable Dr. B. R. Ambedkar : With regard to Mr. Kamath's amendment, it seems to me to be quite unnecessary because the word "oilfields" is used in general terms. Wherever it occurs, the Centre shall have jurisdiction. If an oilfield can occur below water...#

Mr. President : He says "and submarine regions".

Shri H. V. Kamath : I say "mines, oilfields and submarine regions."

The Honourable Dr. B. R. Ambedkar : What my friend has in mind is diving operations.

Shri H. V. Kamath : No, the Pearl industry.

The Honourable Dr. B. R. Ambedkar : All I can say is that I shall consider that matter.

Mr. President : Then I will first put the amendment moved by Prof. Saksena. The question is :

> "That in entry 65 of List I. after the word 'Regulation' the words 'and welfare' be inserted."

The amendment was negatived.

Shri H. V. Kamath : In view of Dr. Ambedkar's assurance, I do not press my amendment now. It may be considered by the Drafting Committee.

[The motion was adopted. Entry 65 was added to the Union List]

ENTRY 66

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

> "That in entry 66 of List I, the words 'and oilfields' be deleted."

It has already been transferred to entry 63.

* * * * *

‡**Shri Jagat Narain Lal** (Bihar : General)**:** Mr. President,... I simply wanted to oppose the amendment—I am sorry—moved by Mr. Brajeshwar Prasad.... I support the amendment moved by Dr. Ambedkar and oppose the amendments moved to them.

Shri Brajeshwar Prasad : Dr. Ambedkar's amendment deletes the word "oilfields".

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*CAD, Vol. IX, 31st August 1949, p. 813.

†*Ibid.*, p. 813

‡*Ibid.,* p. 816.

#The dots indicate interruption

Shri Jagat Narain Lal : The words "the oilfields" have to be deleted as those words have come earlier.

Mr. President : Would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : No. Sir, I would not like to accept any amendment.

Mr. President : We will take the amendment by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad : Sir, I beg to withdraw it.

(The amendment was, by leave of the Assembly, withdrawn.)

[Mr. Kamath's amendment was withdrawn, Dr. Ambedkar's amendment was accepted. Entry 66, as amended was added to the Union List.]

ENTRY 67

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 67 of List I, the following entry be substituted :—

'67. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area not within such State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area not within that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.'

Mr. President : There is an amendment by Sardar Hukam Singh for deletion. That need not be moved. Dr. Deshmukh has an amendment to this entry which I understand he is not moving, so I will put the motion to vote.

(The amendment was adopted.)

[Entry 67, as amended, was added to the Union List]

ENTRY 68

†**The Honourable Dr. B. R. Ambedkar :** I move :

"That for entry 68 of List I, the following entry be substituted :—

*Elections to Parliament and to Legislatures of States and of the President and Vice President; and Election Commission to superintendent, direct and control such elections.'

* * * * *

Mr. President : There is an amendment to this standing in the name of Mr. Santhanam. I think it does not arise in view of the decision we have taken with regard to some other articles.

*CAD, Vol. IX, 31st August 1949, p. 817.

†*Ibid.,* p. 818.

The Honourable Dr. B. R. Ambedkar : It is unnecessary to accept this amendment, because the Election Commission will include Regional Commissioners also.

[The amendment was negatived. Entry 68, as amended by Dr. Ambedkar's motion was adopted and added to the Union List]

ENTRY 69

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 69 of List I, the following entries be substituted :—

'69. The emoluments and allowances and rights in respect of leave of absence of the President and governors; the salaries and allowances of the Ministers of the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries and allowances of the members of Parliament; the salaries, allowances and the conditions of service of the Comptroller and Auditor General of India.

69A. The privileges, immunities and powers of each House of Parliament and of the members and the committees of each House.' "

Mr. President : There is an amendment to this, No. 219 standing in the name of Mr. Kamath.

Shri H. V. Kamath : I do not want to move my amendment, but I would ask how Dr. Ambedkar has forgotten or lost sight of the Supreme Court Judges.

The Honourable Dr. B. R. Ambedkar : Their salaries etc., are provided for in the Schedule. We have said that their salaries shall be such as are specified in the Schedule.

Mr. President : Then amendment No. 220 by Dr. Deshmukh. Does it not go more appropriately to the State List ?

Dr. P. S. Deshmukh : No. Sir. I move :

"That in amendment No. 39 of List I (Sixth Week), after the proposed entry 69 of List I, the following new entry be added :—

69A. Priviliges, immunities and powers of the members of the State Legislatures and their Committees.' "

...I think it is very necessary that the priviliges should be uniform and that they should not differ from State to Stale.

Shri Brajeshwar Prasad : Hear, Hear.

The Honourable Dr. B. R. Ambedkar : It is only proper that each Legislature should have the authority to define its own privileges, immunities and powers, and it is for that reeason that we have provided that Parliament should have power to specify the privileges, immunities and powers of its own members, and the State Legislatures should have

*CAD. Vol. IX, 31st August 1949, pp. 819-820

similar power with regard to their own members. I do not think that the whole power should be concentrated in the Centre. I should have thought that if Parliament passes an Act defining the privileges, immunities and powers of its members, the State Legislatures will probebly follow suit and copy the thing *verbatin* with such minor amendments as they think desirable.

[Dr. Ambedkar's motion was adopted. Amendment by Dr. Deshmukh was rejected. Entry 69 and 69-A, as amended were added to the Union List]

ENTRY 70

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That at the end of entry 70 of List I, the words 'or Commissions appointed by Parliament' be added."

As it stands, the entry refers only to Committees.

Mr. President : I do not think that there is any other amendment to

[The motion was adopted. Entry 70, as amended, was added to the Union List]

ENTRY 70A

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 70 of List I, the following entry be inserted :— '70A. The sanctioning of cinematograph films for exhibition.' "

This entry was originally placed in the concurrent List. It is now proposed to put it in List I.

* * * * *

‡The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, the object bringing this entry which was originally in the Concurrent List to the Union List is two-fold firstly to prescribe as far as possible a uniform standard for sanction of films; and secondly, to prevent an injury being done to any producer of a film whose film may not be sanctioned by any particular province by reason of some idiosyncracy or by reason of some standards which are of an extraordinary character and do not conform to general standards which ought to be prevalent in a matter of sanctioning of Cinematograph. Therefore, I think it is very necessary that this matter of sanctioning instead of being distributed between the Centre and provinces so that each

*CAD, Vol. IX, 31st August 1949, p. 820.

†*Ibid.,* p. 821.

‡*Ibid,* p. 824.

province may go on prescribing its own standard and the Centre be required to persuade each province to examine its standard and point out whether the standards are good or bad, it is much better to bring it over to the Union List. So far as the rest of that matter is concerned it is proposed to leave the entry 43 in List II as it is so that the provinces will retain all the control they have over theatres, dramatic performances and cinemas *minus* the question of sanctioning. I do not think that any injury will be caused to any particular interest by the proposal I have made. On the other hand, as I have stated there would be distinct advantages in concentrating the power of sanctioning in a single body like the Centre.

Shri Raj Bahadur : Only sanctioning ?

The Honourable Dr. B. R. Ambedkar : Once the Centre has sanctioned that the film is a good film and conforms to moral standards, I do not see any reason why there should be any further provision for the exhibition at all. The matter ends.

Mr. President : I put the amendment No.222 to vote.

Dr. P. S. Deshmukh : I would like to withdraw it. (The amendment was, by leave of the Assembly, withdrawn.)

Shri Raj Bahadur : I would like to withdraw my amendment No. 266.

[The amendment was, by leave of the assembly, withdrawn. Entry 70A was added to the Union List.]

ENTRY 73

***Mr. President :** Then comes entry 73. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir I move :

"That for entry 73 of List I, the following entry be substituted :—

'73. Inter-State trade and commerce.' "

The words that follow these words in entry 73 are unnecessary, because there is a proposal to drop entry 33 of List II.

Mr. President : There is an amendment to this, amendment No. 226 of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I am not moving it.

Mr. President : Then there is no amendment to this entry. I put the entry, as moved by Dr. Ambedkar, to the House.

[The amendment was adopted. Entry 73, as amended, was added to the Union List. Entries which are not mentioned here have no coments by Dr. Ambedkar in the debates. Most of these were adopted without any discussion.]

*CAD, Vol. IX, 31st August 1949, p. 825.

ENTRY 73-A

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***Mr. Naziruddin ahmad :** ...So if inter-planetary travel is to be included in the list as it must, this amendment will also have to be accepted. A journey from the Earth to the Moon and back is likely to be the earliest achievement. But Mr. Kamath's amendment will not make it possible. My amendment should be accepted to make the original amendment complete. I hope. Sir, if the amendment is to be rejected, it is rejected in a more satisfactory way by vote.

Mr. President : I do not suppose any further speech is necessary !

The Honourable Dr. B. R. Ambedkar : I do not quite understand whether the proposals of my Friend relate to matters which are unknowable or which relate to matters which are unknown. If they are unknown, then we have wasted our lime. But if they arc unknown and not unknowable, then we have enough powers to deal with them. Why bother with any entry at all ?

Mr. President: I will put Mr. Naziruddin Ahmad's amendment to the vote.

(The amendment was negatived.)

LIST I

ENTRY 74

†The Honourable Dr. B. R. Ambedkar : (Bombay : General): Sir, I move:

> "That for entry 74 of List I, the following entry be substituted:—
>
> '74. The regulation and development of inter-Stale rivers and river-valleys to the extent to which such regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest.' "

Shri Brajeshwar Prasad : (Bihar : General): Mr. President, may I with your permission, say one word before I move my amendment? Somehow, due to my fault perhaps, one word is missing from this amendment. I want the inclusion of the word "regulation". Sir, I beg to move:

That in amendment 3562 of the List of Amendments, for the proposed entry 74 of List I, the following be substituted :—

> "74. The regulation and development of inter-State rivers and inter-State waterways, including flood controol, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest."

*CAD. Vol. IX, 31st August 1949, p. 828.

†*Ibid.,* 1st September 1949, p. 830.

Sir, I have only the comment to offer, that this amendment of mine is more comprehensive than the amendment moved by Dr. Ambedkar.

* * * * *

The Honourable Dr. B. R. Ambedkar : Sir, all that I would like to say is that whatever Shri Brajeshwar Prasad wants is included in my amendment and it is therefore unnecessary to accept it.

[Shri Brajeshwar Prasad withdrawn the amendment, The amendment of Dr. Ambedkar was adopted. Article 74, as amended was added to the Constitution.]

ENTRY 75

[Amendment to Entry 75 moved by Naziruddin Ahmad was not accepted by Dr. Ambedkar. It was therefore negatived by the House. Entry 75, as amended, was added to the List.]

ENTRY 76

***Honourable Dr. B. R. Ambedkar :** Sir, I move.

"That for entry 76 of List I, the following entry be substituted :—

'76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture supply and distribution of salt by other agencies'."

[Entry 76 as amended was added to the Union List.]

Shri Mahavir Tyagi: (United Province : General): Sir, when you put the question to vote, Dr. Ambedkar says "Ayes" beyond the mike; with the result that the Ayes have an undue volume of their voice.

ENTRY 79

†The Honourable Dr. B. R. Ambedkar : Sir, with regard to entry 79, I have to make one observation. Some Members of the House are under the impression that if entry 79 remained in List I it would be opened also to the Centre to appropriate the proceeds of any taxes that may be levied on the Stock Exchanges and futures market and taxes other than stamp duties on transactions therein. I would like to make it clear that in putting Stock Exchanges and futures market in List I, there is no intention on the part of the Drafting Committee that the Centre should have any right to appropriate the proceed of any taxes that might be levied under this entry. Consequently, the Drafting Committee proposes, in order to remove all sorts of doubts, to amend article 250 which requires the proceeds of certain taxes to be distributed among the provinces. What we propose to do is,

*CAD, Vol. IX, 1st September 1949, p. 831.

†*Ibid.,* p. 832.

as a consequential provision, to add to article 250 which contains clauses *(a)* to *(d)* enumerating the taxes to be distributed, 'proceeds of any taxes on Stock Exchanges and futures market', so that they too will be subject to distribution among the provinces. That would, I am sure, remove all doubts that certain Members have that this entry if it remains in List I would give power to the Centre to appropriate the taxes. That is not the intention. The entry there is purely legislative. It would have no financial implications at all.

Pandit Hirday Nath Kunzru : (United Provinces : General): May I ask Dr. Ambedkar whether he intends also to bring in a modification of article 277 in this connection?

The Honourable Dr. B. R. Ambedkar : Well, I shall consider any consequential provision necessary to bring in to make the matter consistent.

[Entry 79 was added to the Union List.]

ENTRY 81

***Shri Brajeshwar Prasad :** Mr. President, Sir, I beg to move :

"That for amendment No. 3572 of the List of amendments, the following be substituted :—

"That for entry 81 of List I, the following be substituted :—

"81. Duties in respect of succession to property including agricultural land."

* * * * *

†**The Honourable Dr. B. R. Ambedkar :** I may mention, Sir, that this matter was considered at the conference with the Provincial Premiers. They were of option that, although the principle might be sound, they were at the present moment not prepared to make this radical change.

[The amendment of Mr. Brajeshwar Prasad was withdrawn and Entry 81 was added to the Union List.]

ENTRY 83

‡**Mr. President :** There are two amendments to this.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 83 of List I, after the word 'railway' a comma and the word 'sea' be inserted."

The intention is to complete the entry by the addition of the word "sea" which was inadvertently omitted.

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*CAD, Vol. IX, 1st September 1949, p. 833.

†*Ibid.,* p. 835.

‡*Ibid.,* p. 836.

***The Honourable Dr. B. R. Ambedkar :** Sir, I cannot accept Dr. Deshmukh's amendment because the inclusion of the word "land" would also permit the Centre to levy Terminal Tax on goods and passengers carried by "road". Under our scheme Terminal Taxes on goods and passengers carried by road will be a matter which will be exclusively within the jurisdiction of the different States. That is the principal objection why I cannot accept his amendment. You will remember, Sir, that he tried to move a similar amendment on another occasion which had been rejected by the House.

Now with regard to Mr. Sidhva, this matter again was debated last time and I said that although these taxes were leviable by the Centre, the proceeds of all of them would be distributable among the different Provinces. The Centre would not claim any interest. If the Provinces after getting the proceeds want to pass on any part of those proceeds to the local bodies they are free to do so. It is not possible in this Constitution to make a provision for any matter of taxation that may be available to a local authority. That is a matter *inter se* between the State and the local authority and therefore it is not possible now to alter this entry either by way of amending it or by way of transferring it to List No. II.

(Shri R. K. Sidhva and Dr. P. S. Deshmukh withdrew their amendments)

"That in entry 83 of List I, after the word 'railway' a comma and the word 'sea' be inserted."

[The amendment of Dr. Ambedkar was adopted. Entry No. 83, as amended, was added to the Union List.]

ENTRY 86

(Amendment No. 54 was not moved)

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in entry 86 of List I, the words 'non-narcotic drugs' be deleted."

The proposed list put non-narcotic drugs in the concurrent List.

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‡The Honourable Dr. B. R. Ambedkar : It is quite true, Sir, that at present this entry is in the provincial list. But, there are two facts to be recognised. One is that no province has at any time so far levied any tax on these items. Therefore, it has not been exploited by the provinces for their financial purposes. Secondly, even when the matter becomes con-

*CAD, Vol. IX, 1st September 1949, p. 837.

†*Ibid.,* p. 838.

‡*Ibid.,* p. 839.

current, and any legislation is made by the Centre, which has a revenue aspect, the revenue will be liable to be distributable under the provisions of clause *(2)* of article 253. Consequently, so far as finances are concerned, there is really no loss to the provinces at all. Then, it is necessary that we should have an All-India Drugs Act operating throughout the area. That cannot happen unless non-narcotic drugs are put in the Concurrent List. That also saves the power of the Provinces to make such local legislation as they may like with regard to these drugs.

Mr. President : I put the amendment moved by Dr. Ambedkar. The question is :

[The amendment was adopted. Entry 86, as amended, was added to the Union List.]

ENTRY 86A

***Shri H. V. Kamath :** I do not know if the medical and scientific terminology used in my amendment has been misunderstood. This terminology will be found in any standard book on Pharmacology.

The Honourable Dr. B. R. Ambedkar : We have got the power. It is covered by entry 20 which we are going to put in the Concurrent List.

(The amendment of Shri H. V. Kamath was negatived).

ENTRY 88A

* * * * *

†The Honourable Dr. B. R. Ambedkar : I hope my friends is not going to read that 4-pages printed judgement of the Supreme Court of the United States. It has been circulated to everybody.

Shri Deshbandhu Gupta : It is wrong for my friend to presume that the whole judgement will be read. Of course, if it is necessary to read some extracts I will do so. I am only referring to the parts which are relevant to point raised by me. I wish to point out that exception was taken by those publishers on the ground that the tax violated the Federal Constitution in two particulars (1) that it abridges the freedom of the press in contravention of the due process clause contained in Section 1 of the Fourteenth Amendment; (2) that it denies appellees the equal protection of the laws in contravention of the same amendment.

The Honourable Dr. B. R. Ambedkar : I am also rising on a point of order.

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*CAD, Vol. IX, 1st September 1949, p. 840.

†*Ibid.,* p. 841.

Mr. Naziruddin Ahmad : There could not be two points of order at the same time.

The Honourable Dr. B. R. Ambedkar : My point of order is an elementary one whether my friend who is a signatory to this amendment—his name is mentioned here after Shri Sitaram Jajoo—having already given notice of this amendment can he now say that this is not in order?

Shri Deshbandhu Gupta : My friend has amended his own amendments hundred times.

The Honourable Dr. B. R. Ambedkar : If he was to propose an amendment to his amendment, that would be in order.

Shri Deshbandhu Gupta : I have every right to change my opinion just as my friend has done very often.

Mr. President : Even if he has signed the notice, I do not know whether he signed for 88A.

The Honourable Dr. B. R. Ambedkar : His name is Shri Deshbandhu Gupta.

* * * * *

***Mr. President :** I should like to hear the Members on the main question. But before I do that, I would like to know whether the Drafting Committee would reconsider this item...

The Honourable Dr. B. R. Ambedkar : We should like to hear the various points of view as expressed in this House, and then if the House or you. Sir, find that it is not possible to come to any definite conclusion right now, then the matter may be remitted to the Drafting Committee so that the Committee, in view of the various expressions of opinion, might find out some formula acceptable to the House. But I do not think, as it is, it is any use trying to recast it. We have got here very definite amendments. One is by my friend here and there is another by my Friend Mr. Jhunjhunwala—quite definite amendments.

Mr. President : There are really two point to be considered. One is whether the amendment which is proposed to be moved by Mr. Goenka is in order, in view of the previous article which we have already passed. And the second is...

The Honourable Dr. B. R. Ambedkar : Sir, If I may say so, this matter cannot be decided on the basis of whether something will be *ultra vires* or whether something will not be *ultra vires*. This House is not competent to decide that. That is a judicial matter. All that the House must decide is whether we want to give protection to the newspapers from the

*CAD, Vol. IX, 1st September 1949, pp. 843-844.

various entries which are included, either in List I, List II or List III; and if we want to give them any exemption from these entries, then to what extent we should give sure about. We cannot give any assurance to any newspaperman here and now that we have made a case which is fool-proof and knave-proof. We cannot give that assurance. So we had better decide the particular question whether we do want to give protection to newspapers from the operation of the various entries. That is the main question.

* * * * *

***Mr. President :** You should also consider the question whether it does not offend against Article 13.

The Honourable Dr. B. R. Ambedkar : On that we have some views and if you are prepared to hear, I will submit them.

* * * * *

†**The Honourable Dr. B. R. Ambedkar :** Sir, I should like at the outset to state what the point of order is, or how I have understood it, because I should like to be corrected at the outset, if I am wrong. The point of order seems to be this that in view of the fact that this Assembly has passed article 13 which is a part of the Fundamental Rights and which says that all citizens shall have the right to freedom of speech or expression,—in view of this, as it open to this House to pass an article which would curtail the fundamental right given by article 13 ? I take it that is the point that we have now to consider.

In support of the proposition that this House is now debarred from considering any proposal which would have the effect of limiting freedom of speech, there has been cited a judgement of the Supreme Court of the United States in which—I have not read the whole thing, but only parts— it has been said that any tax levied on the press is *ultra vires,* in view of the fact—I am using the language of the United States—that it abridges the freedom of the press.

Shri Deshbandhu Gupta : Barring income-tax. It is stated in the judgement itself.

The Honourable Dr. B. R. Ambedkar : Now, Sir, it is not clear from the statement of fact of that particular case what the nature of the particular tax was which was called in question, nor is it clear as to the severity of that particular tax which was called in

*CAD, Vol. IX, 1st September 1949, p. 845.

†*Ibid*., pp. 848-851.

question. In my judgement, apart from the levy of the tax, the severity of the tax also would be an element in considering whether the tax was *ultra vires* or not. As I said, there is no reference to this important fact in this judgement. I am therefore not prepared to go by that judgement.

I am proceeding along other lines of arguments which I think are substantial and are not open to any criticism. The first point I want to submit is this: that, notwithstanding the fact that the constitutional guarantees which were given in the Constitution of the United States, the United States Supreme Court itself has held that these fundamental rights guaranteed by the Constitution are not absolute and that the Congress of the United States has, notwithstanding the language used in the Constitution, the right to impose reasonable restrictions on those fundamental rights. In fact I may remind the House that, in the opening speech which I made in support of the motion that this House do proceed to take into consideration the Draft Constitution, I devoted a considerable part to the consideration of this matter, because I had noticed some criticisms in papers and by others, to whom I was bound to pay a certain amount of respect and attention, that our fundamental rights were of no value at all, as they were subjected to various limitations which were enumerated in propositions that follow article 13, namely clauses *(2), (3), (4)* and *(5).*

In order to meet those criticisms, I took some trouble to examine the decisions of the Supreme Court on this matter. I did so because at one time I felt that in view of the fact that the constitutional guarantees which were called fundamental rights were enunciated in the Constitution of the United States in absolute terms without any qualifications, it may not have been open to the Supreme Court of the United States to limit those provision. But to my great surprise I found that the United States Supreme Court had taken the very same attitude that we have taken in the framing of the Constitution, namely that fundamental rights, however fundamental they may be, could not be absolute rights. They must be subject to certain limitations.

Now, if the House will permit me I shall quote only one passage from my speech. This is what I said.

> "In Gitlow *vs.* New York, in which the issue was the constitutionaly of a New York, 'criminal anarchy' law which purported to punish utterances calculated to bring about violent change, the Supreme Court said :
>
> "It is a fundamental principle, long established that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right

to speak or publish, without responsibility whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom'."

And I quoted many other cases. My whole point is this: that even in the United States itself, it is an acknowledged proposition that there must be some limitations upon the fundamental rights. On that there can be no question at all, in my judgement. Therefore, in so far as our entry—I am not going into the amendments for the moment— deals with tax on advertisements, my submission is that that entry could not be questioned as an entry which is *ultra vires* of this House, because it is going to put some kind of limitation upon the freedom of the press if it is acted upon by the provincial Governments. I entirely refuse to accept that interpretation that any tax levied under the head 'Advertisements' would be *ultra vires* because it would infringe article 13.

The proposition which I submit could be enunciated and which is plausible and which may be accepted is this: that any imposition upon a newspaper of a tax of a severe nature which will result in wiping it out altogether, such an exercise of the taxation power, would be *ultra vires,* because if would completely wipe out the freedom of speech which has been guaranteed by article 13. In so far as the taxation imposed upon advertisements is not of a reasonable nature and is discriminatory, that is to say, it is merely confined to newspapers and all other forms of advertisements are exempted, then I can understand that that would violate article 15 under which we propose to give equal protection to all. Therefore my submission is that any argument which goes to the length of saying that anything which affects newspapers and the freedom of speech or writing in a newspaper would be *ultra vires,* I take the liberty to say, is not an argument which I am prepared to accept and which. I hope, this House will not accept.

Now I come to the other question. It is quite true that, in view of certain circumstances which have come to the surface in certain provinces, it may be necessary to transfer this particular entry regarding newspapers from List I to List II or place it in List III. That is a matter not of constitutional law. That is a matter of policy and a matter of confidence; whether you are prepared to put more confidence in the Centre or whether you are prepared to put more confidence in the provinces or whether you are prepared to put confidence in

the provinces but would like to reserve to the Centre a certain amount of liberty and power to correct any wrong that a province might do is a matter which of course is open for discussion. That is what we have been discussing; whether any particular entry should remain in List I or part in List I and part in List II or in List III.

On that the House has got perfect liberty to decide, because it is a matter on which the House has got complete freedom, and nobody is going to suggest that the House has its hands tied down by reason of article 13 and that it cannot do anything to impose any kind of limitation upon the newspapers. I repudiate that argument absolutely.

Now, Sir, I should like to deal with the various amendments. If you will permit me, I would like to deal with them because those who may follow me may criticise what I am saying. It seems to me that the friends who are interested in newspapers are really trying to get complete immunity, so to say, from any kind of taxation that may be levied by the provinces. The first amendment moved by my Friend, Mr. Goenka, and several others—there are some fifty or sixty names—is that it should be transferred to the Union List, List I. In doing that, they have done something which we ourselves had not done. Our newspaper entry is not connected with taxation. Those members who have closely watched the arrangement in List I and List II will realise that we have separated the entries in to two parts, entries which are purely legislative and entries which are taxational. You will remember that newspapers, although they are mentioned in List III, they are mentioned only among the legislative entries. Now, the amendment moved by my Friend Mr. Goenka, has done the worst from his point of view, viz., he has put the newspapers in that part of List I which deals with taxation. It means that it would be open now for the Centre to levy a tax on newspapers. (*Hear, hear.*) I do not like newspapers and I am not interested in either injuring them or in protecting them. I am prepared to place the whole matter in the hands of the House to do what it likes.

The second amendment moved by my friend, Mr. Jhunjhunwala, does what? He thinks that, although newspapers may be transferred to List I, newspapers as goods open to sale, will still remain in List II because the entry in that list is a very broad entry and would cover newspapers as goods and therefore he feels that there is no

purpose served by merely accepting the amendment of Mr. Goenka because they would be liable to be taxed by the provinces under the entry relating to taxes on sale of goods. Therefore he has moved his amendment to get the newspapers out of the Sales Tax Act.

Now, the question to be considered is whether the provinces would agree that so important a part of what I may call the base of their taxation as constituted by the newspapers should be altogether eliminated from the field of provincial taxation. It is a matter which has to be considered. Sir, being a financial matter, I do not think that the Drafting Committee would be prepared to take the responsibility on its own shoulders without consultation either with the Finance Ministry or with the Finance Ministers of the Provinces. We have been taking a great deal of responsibility so far as purely legislative entries are concerned. When the question of finance is concerned, we have a sort of standing convention that we should always consult the Central Finance Ministry as well as the Finance Ministers of the various provinces.

Therefore these are the difficulties that are involved in these amendments. Now I do not know if you transfer the entry on newspapers to the Union List, the Centre may levy a tax on newspapers as manufacturers, because the Centre is entitled to put an excise duty on any goods manufactured in any part of India. It seems to me therefore that it would be difficult for the newspapers to escape taxation. All these things have to be taken into consideration. That is to say, these are extraneous matters to which I have given expression at this stage because I think that every Member who wants to take part in the debate, ought to know what the difficulties are. All that I am interested in at the moment is this that there is no bar to the House considering any kind of limitation, notwithstanding that we have passed article 13. The proposition which is being sought to be placed before the House for its acceptance is in my judgement a very dangerous proposition. It would eliminate even taxation absolutely. Even article 24 could not be there. Many other complications would arise. If you say that because fundamental rights are guaranteed therefore the taxation power should also not be exercised because that would result in the limitation or the destruction of the fundamental rights, it is too large a proposition and I do not think that anybody will ever accept this.

* * * * *

Pandit Thakur Das Bhargava : Supposing there is not complete destruction of this right, but there is material curtailment or abridgement, will it not be covered by this?

The Honourable Dr. B. R. Ambedkar : What is reasonable the Court will decide.

Shri Alladi Krishnaswami Ayyar : I have nothing to add to my speech.

(At this stage Shri Deshbandhu Gupta rose to speak.)

Mr. President : I do not think there is any right of reply in a matter like this.

Shri Deshbandhu Gupta : On a point of order, I want to clear one or two points which seems to have created confusion.

Mr. President : No. It is a question whether you have the right to reply or not.

An honourable Member : The President has already said that the honourable Member has no right of reply.

Shri Deshbandhu Gupta : Sir, as some points have been raised and I would request you to explain these points particularly as no speaker from this side has spoken after Shri Alladi Krishnaswami Ayyar raised the points.

Mr. President : I think a larger number of people spoke from your side and from your point of view.

I have understood the point of order that has been raised. I shall have to consider it and I will give my ruling later, but in the meantime I would ask Dr. Ambedkar to consider the other point which he himself has raised, supposing I rule that it is in order, then in that case I would expect him to be ready with the answer on the merits also as to whether you will have it in the form in which it is sought to be moved by Mr. Goenka or sought to be amended by Mr. Jhunjhunwala.

The Honourable Dr. B. R. Ambedkar : In that case, they should withdraw the amendment.

Shri Deshbandhu Gupta : The amendment has not been moved. I took exception to the moving of the amendment.

Mr. President : I shall give my ruling later. We shall take up the other items now. Certain new items have been proposed. Some are in the printed list. Before we go to that, let us go through the other entries.

*CAD, Vol. IX, 1st September 1949, p. 853.

ENTRY 91

***Mr. Naziruddi Ahmad :** I shall not move the amendment; but I shall speak on the entry itself.

The Honourable Dr. B. R. Ambedkar : Why not present the baby with the song? Why the song only? You may move the amendment and make a speech.

* * * * *

†The Honourable Dr. B. R. Ambedkar : Mr. President, I propose to deal with the objection raised by my friend Sardar Hukam Singh. I do not think he has realised what is the purpose of entry 91 and I should therefore like to state very clearly what the purpose of 91 in List is. It is really to define a limit or scope of List I and I think we could have dealt with this matter, viz., of the definition of and scope of Lists II and III by adding an entry such as 67 which would read :

"Anything not included in List II or III shall be deemed to fall in List I."

That is really the purpose of it. It could have been served in two different ways, either having an entry such as the one 91 included in List I or to have an entry such as the one which I have suggested— 'that anything not included in List II or III shall fall in List I'. That is the purpose of it. But such an entry is necessary and there can be no question about it. Now I come to the other objection which has been repeated if not openly at least whispered as to why we are having these 91 entries in List I when as a matter of fact we have an article such as 223 which is called residuary article which is "Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List". Theoretically I quite accept the proposition that when anything which is not included in List II or List III is by a specific article of the Constitution handed over to the Centre, it is unnecessary to enumerate these categories which we have specified in List I. The reason why this is done is this. Many States people, and particularly the Indian States at the beginning of the labours of the Constituent Assembly, were very particular to know what are the legislative powers of the Centre. They wanted to know categorically and particularly; they were not going to be satisfied by saying that the Centre will

*CAD, Vol. IX, 1st September 1949, p. 854.

†*Ibid.,* pp. 856-857.

have only residiary powers. Just to allay the fears of the Provinces and the fears of the Indian States, we had to particularise what is included in the symbolic phrase "residuary powers". That is the reason why we had to undergo this labour, notwithstanding the fact that we had article 223.

I may also say that there is nothing very ridiculous about this, so far as our Constitution is concerned, for the simple reason that it has been the practice of all federal constitutions to enumerate the powers of the Centre, even those federations which have got residuary powers given to the Centre. Take for instance the Canadian constitution. Like the Indian constitution, the Canadian constitution also gives what are called residuary powers to the Canadian Parliament. Certain specified and enumerated powers are given to the Provinces. Notwithstanding this fact, the Canadian constitution. I think in article 99, proceeds to enumerate certain categories and certain entries on which the Parliament of Canada can legislate. That again was done in order to allay the tears of the French Provinces which were going to be part and parcel of the Canadian Federation. Similarly also in the Government of India Act; the same scheme has been laid down there and section 104 of the Government of India, Act, 1935 is similar to article 223 here. It also lays down the proposition that the Central Government will have residuary powers. Notwithstanding that, it had its List I. Therefore, there is no reason, no ground to be over critical about this matter. In doing this we have only followed as I said, the requirements of the various Provinces to know specifically what these residuary powers are, and also we have followed well-known conventions which have been followed in any other federal constitutions. I hope the House will not accept either the amendment of my Friend Sardar Hukam Singh nor take very seriously the utterings of my Friend Mr. Naziruddin Ahmad.

[All amendments were negatived. Entry 91 was added to the Union List.]

***Mr. President :** I think it is not necessary to have any further discussion on this point. However, if Dr. Ambedkar has anything to say about it, I would hear him; but otherwise I do not think any discussion is necessary on a point like this.

The Honourable Dr. B. R. Ambedkar : No discussion is necessary. I do not wish to say anything.

*CAD, Vol. IX, 1st September 1949, p. 859.

Shri Brajeshwar Prasad : I would like to withdraw my amendment.

[The amendment of Shri Brajeshwar Prasad was not allowed to be withdrawn. It was put to vote and negatived.]

ENTRY 70-A

LIST I

***Mr. President :** Has Dr. Ambedkar anything to say on this?

The Honourable Dr. B. R. Ambedkar : No, Sir, I have nothing to say in reply. Young men and young women are capable of taking care of themselves. Why bother about them?

[The amendment was negatived. Similar amendment by Prof. S. L. Saksena was also negatived.]

ENTRY 59

†Shri Raj Bahadur : ...We have got to realise the seriousness of the problem. As I said, I would not move any of the other amendments, because I feel somewhat discouraged to see that the Honourable Chairman of the Drafting Committee is not even taking the trouble to reply to most of the amendments moved by other members suggesting new entries.

Shri T. T. Krishnamachari : He is engaged in studying the amendment moved by you.

Shri Raj Bahadur : I would be very fortunate if I get a reply to my motion.

The Honourable Dr. B. R. Ambedkar : Sir, as my friend expects a reply from me, I would just say one or two words.

The question of control and eradication of beggary is a matter which has been already provided for in List III in entry 24 'Vagrancy' which includes beggary. The only point is whether it should remain there or should be brought in List I. I think it will be better to leave it in List III so that both the Provinces and the Centre could operate upon that entry.

[The amendment of Shri Raj Bahadur was withdrawn.]

LIST II

ENTRY I

* * * * *

‡Mr. President : Do you want to say anything, Dr. Ambedkar ?

*CAD, Vol. IX, 1st September 1949, pp. 860-861.

†*Ibid.,* p. 863.

‡*Ibid.,* p. 865.

The Honourable Dr. B. R. Ambedkar : I do not want to say anything.

Shri Brajeshwar Prasad : I withdraw my amendment.

Mr. President : The House evidently is not in a mood to give permission for this amendment to be withdrawn. I will put it to the vote. The question is:

"That entry I of list II be transferred to List I as new entry 2A".

(The amendment was negatived.)

Mr. President : There is an amendment by Dr. Ambedkar, amendment No. 63.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry I of List II, the following words be deleted :

'preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.' "

It is proposed that this entry should be put in List III. That is the reason why I propose that these words be deleted.

Sardar Hukam Singh : Sir, I move :

"That in entry I of List II, after the words "naval, military or air forces" the words "or any other armed forces of the Union" be inserted."

My purpose in moving this amendment is that I feel that it is a lacuna, an omission on the part of the Drafting Committee. If I am told that it has been deliberately omitted...

The Honourable Dr. B. R. Ambedkar : I am prepared to accept this amendment.

[The amendment was adopted. Entry 1, as amended was added to the State List.]

ENTRY 2

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 2 of List II, the following entry be substituted :—

'2, The administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; fees taken in all courts except the Supreme Court.' "

The only change made is that the High Courts have been brought in because as I explained yesterday so far as the constitution and organization of High Courts are concerned, they are completely under the control of the Centre.

[Entry 2 as amended, was added to the State lis.]

ENTRY 4

†Shri Brajeshwar Prasad : I will move my amendment without offering any comment, *i.e.,* I will not deliver any speech. Sir, I move:

*CAD, Vol. IX, 1st September 1949, p. 866.

†*Ibid*., pp. 867-868.

"That for amendment No. 3589 of the List of Amendments, the following be substituted :—

'That entry 4 in List II be omitted from that List and be included in List I.' "

Sir, I may with your permission say that instead of List I the entry should be included in List III. It will meet the objection of Mr. T. T. Krishnamachari. Sir, I regard "Police" as a vital subject and I think it should be included in the concurrent powers and thus brought under the Centre.

Shrimati Purnima Banerji (United Provinces : General)**:** I want to ask whether you are satisfied that 'Police' includes the Home Guards and the Pranthiya Raksha Dal.

The Honourable Dr. B. R. Ambedkar : That depends upon any legislation made by the province. If under the Police Act they enrol a certain person, he is a police for that purpose or if they enrol under some other Act and they are given the powers of the Police, that will also be police.

Shri Mahavir Tyagi : May I ask whether the Home Guards and the Pranthiya Raksha Dal go under the residuary powers of the Government of India or be controlled by the local Government? Where will they go?

The Honourable Dr. B. R. Ambedkar : If it is not Police, then it will go under the Central government. "Police" is used in contradiction to "Army". Anything which is not "army" is Police.

Shri Mahavir Tyagi : Let that go down as your ruling within questions.

Pandit Hirday Nath Kunzru : If Dr. Ambedkars' interpretation is correct, then a province can raise an army without calling it by that name.

The Honourable Dr. B. R. Ambedkar : No, I do not think they can do it.

Dr. P. S. Deshmukh : That is what is happening already.

The Honourable Dr. B. R. Ambedkar : An army is enrolled under the Indian Army Act 1911 and there are stringent conditions laid down as to enrolment in that Act. A province has no right to legislate on that entry at all.

Pandit Hirday Nath Kunzru : A province will not legislate with regard to the creation of an army at all. But, it can raise a force and give it military training without calling it an army.

Shri T. T. Krishnamachari : I might mention, Sir, that there are special armed police in the provinces. They are recruited under the powers given under the Police Act. They are considered to be a police force even though they are on a *quasi* military basis.

Shri Mahavir Tyagi : Why don't you add the word home Guard and make it clear?

The Honourable Dr. B. R. Ambedkar : There are armed police; there are unarmed police.

Mr. President : The question put by Pandit Kunzru is whether a province will be able to raise an army, without calling it an army, but calling it police.

The Honourable Dr. B. R. Ambedkar : I am sure if a province is going to play a fraud on the Constitution, the Centre will be strong enough to see that that fraud is not perpetrated.

[Amendment of Mr. Brijeshwar Prasad was withdrawn. Entry 4 was added to the State List.]

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ENTRY 7A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 7 of List II, the following entry be inserted :—

'7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

This is merely a corresponding entry to what we have already done so far as List I is concerned.

(List 7-A was added to the State List)

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ENTRY 9

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for entry 9 of List II, the following entry be substituted :—

'9. Acquisition or requisitioning of property except for the purposes of the Union, subject to the provisions of entry 35 of List III.' "

The only change is that the underlined words are now put in the Concurrent List and it is therefore necessary to omit them from this entry. This is also what we have done with regard to a similar entry in List I.

[Dr. Ambedkar's motion was adopted Entry 9, as amended, was added to the State List.]

ENTRY 10A

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 10 of List II, the following entry be inserted :—

'10-A. Ancient and Historical Monuments other than those specified in entry 60 of List I.'"

*CAD, Vol. IX, 1st September 1949, p. 869.

†*Ibid.,* pp. 869-870.

‡*Ibid.,* p. 871.

We have distributed this entry, kept apart in List I and the other part is now placed in List II.

(Entry 10-A was added to the State List)

ENTRY 12

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 12 of List II, the following entries be substituted:—

'12. The salaries and allowances of Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, Council of the Chairman and Deputy Chairman thereof; the salaries and allowances of the members of the Legislature of the State.'

'12-A. The priviledges, immunities and powers of the Legislative Assembly and of the members and the Committees thereof and if there is a Legislative Council, of that Council and of the members and the Committees thereof.' "

This is merely a counterpart of what we have done so far as List I is concerned regarding the Centre.

(Entries 12 and 12-A were added to the State List)

ENTRY 14

†Mr. President : Now the question is whether we should have an additional entry as "Regulation and control of Houses and Rents". Mr. Tyagi, you move it as a separate entry.

The Honourable Dr. B. R. Ambedkar : Yes, he may move it as a separate entry.

Shri Mahavir Tyagi : I am grateful to you and also to Dr. Ambedkar. He has for the first time been generous to me.

Sir, I do submit that it is really embarrassing to move an amendment to the list which has been submitted by the Drafting Committee, for the Drafting Committee is always very resourceful and it is very difficult to struggle with them successfully.

Mr. President : But you are moving an additional entry.

Shri Mahavir Tyagi : Yes, Sir, but the acceptance of the Drafting Committee has to be sought After all it is primarily they who accept suggestions, and if they accept them, then the House readily agrees to them.

The House has already agreed to one entry which says that all the residuary powers will go to the Centre, all that is not mentioned in List II or List III. I submit that the control of Houses in urban areas and the control of rents of those houses are an important matter today. It was not

*CAD, Vol. IX, 1st September 1949, p. 871.

†*Ibid.,* pp. 873-874.

in the original list of the Government of India Act 1935, because at that time the control over the houses and their rents was not needed and it was not prevalent in India. But...

The Honourable Dr. B. R. Ambedkar : I understand the honourable Member's argument and I could reply to him in a few minutes.

Shri Mahavir Tyagi: Yes, and I therefore only submit that this subject of control of the houses and the control of the rents should be there. I would even go further and say that the control of good grains also should come in. If the House agrees, it may be brought in as an independent item somewhere.

The Honourable Dr. B. R. Ambedkar : Sir, there are, I think three distinct questions, although they have not been stated by Mr. Tyagi in that form. The first question is whether the Provincial legislature should or should not have any power to regulate and control houses and house-rent. I think on that issue, there can be no difference of opinion, that the Provincial Governments must have such power. The question then is whether the Draft Constitution and the entries in the list make any provision for the provincial legislatures to exercise powers for the purpose of regulating and controlling the houses and the rents. Now, my submission is that the specific entry as proposed by Mr. Tyagi is quite unnecessary, because there are two other entries, namely entry 24 of List II which deals with "land, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents, etc." That is one entry. Then there is another entry No. 8 in List III about transfer of property other than agricultural land; registration of deeds and documents. These two entries have been found to be quite sufficient to enable the Provincial Governments to make laws relating to the regulation and control of Houses and rents,—My Friend Mr. Tyagi knows also, that notwithstanding the fact that such an entry does not exist even today, under List II of the Government of India Act, none-the-less, the Provinces have enacted laws in this matter. Therefore entry 24 relating to land and the other entry. No. 8 about transfer of property are quite sufficient to give the power which Mr. Tyagi wants that they should have.

Another difficulty in the way of accepting the amendment of Mr. Tyagi is this. Suppose we were now to include this entry, it would cause a certain amount of doubt on the laws that have already been made by the provinces for the purpose of regulation of houses and the control of rents. It would appear that the legislature itself felt that the entry as it already existed, was not sufficient for the purpose of giving the legislature power

to make laws for this purpose. And therefore it was necessary specifically to give this power. I think we would unnecessarily casting doubts upon the validity of laws already made. Therefore, this is an additional ground against accepting the amendment. In the first place, as I have said it is unnecessary because the provinces have got sufficient power to make such laws and the other is this question of validity of laws made.

Now I come to the third part. My Friend Mr. Tyagi has been struggling to some extent when I was dealing with the question of cantonments to remove the power of allowing cantonments to regulate rents and the premises within their areas. If my friend's intention is that by getting this entry accepted, it would be possible for the provinces to nullify the power which has already been given by the entry in List I, as it has been already passed, then I think, he is completely under a mistake. Not with standing the fact that this entry may become part of the Constitution, the entry which we have already passed would be valid; notwithstanding any power vested in the Provinces, the Cantonments will have the power to make regulations with regard to the premises and the rent of the premises situated in that area. Therefore, I submit to my Friend mr. Tyagi that his purpose is already served and it is unnecessary to have this entry, especially because it would be causing a certain amount of doubt on the validity of the laws already made under these entries as they stand.

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***Shri Mahavir Tyagi :** ....Suppose the owner of a house takes objection on the ground that the provincial government has no right to control rents, then what happens?

The Honourable Dr. B. R. Ambedkar : No, he cannot because under the General Clauses Act, land includes the buildings.

Shri Mahavir Tyagi : It is a new interpretation of the law, that land includes the building.

The Honourable Dr. B. R. Ambedkar : It is new because law is not the profession of Mr. Tyagi.

ENTRY 15

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

> "That in entry 15 of List II, the words 'registration of births and deaths' be deleted."

This is transferred to the concurrent list.

*CAD, Vol. IX, 1st September 1949, pp. 874-875.

†*Ibid*., p. 875.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** I do not accept any of the amendments moved.

[Amendments by Shri Kamath and Brijeshwar Prasad were rejected. The motion of Dr. Ambedkar was adopted. Entry 15, as amended, was added to the State List.]

ENTRY 18

†The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 18 of List II, the following entry be substituted :—

'18. Education including universities, subject to the provisions of entries 40, 40-A, 57 and 57-A of List I and entry 17-A of List III.' "

[All amendments to Entry 24 were rejected by Dr. Ambedkar and were negatived by the House. Entry 24 was added to the State List.]

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Sardar Hukam Singh (East Punjab : Sikh): Sir, Now, that Pandit Bhargava has moved this amendment that this entry should be transferred to the Concurrent List there is no need for me to move my amendment and I wholeheartedly support Pandit Bhargava's amendment.

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‡The Honourable Dr. B. R. Ambedkar : Sir, I am prepared to accept this amendment (of Pandit Bhargava as below):

"That with reference to amendment No. 3626 of the List of Amendments, entry 43 in List II be transferred to List III as entry 9-A."

(The motion was adopted.)

Entry 43 of List II was transferred to the Concurrent List.

ENTRY 45

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#The Honourable Dr. B. R. Ambedkar : Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry 45 and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was omitted, here would be absolutely no control of betting and gambling at all, because if entry 45 was there it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter.

*CAD, Vol. IX, 2nd September 1949, p. 880.

†*Ibid.,* p. 881.

‡*Ibid.,* p. 914.

#*Ibid.,* pp. 917-918.

I hope that they will realise what they are doing. If this entry was omitted, the other consequence would be that this subject will be automatically transferred to List I under entry 91. The result will be the same, viz., the Central Government may either permit gambling or prohibit gambling. The question therefore that arises is this whether this entry should remain here or should be omitted here and go specifically as a specified item in list I or be deemed to be included in entry 91. If my friends are keen that there should be no betting and gambling, then the proper thing would be to introduce an article in the Constitution itself making betting and gambling a crime, not to be tolerated by the State. As it is, it is a preventive thing and the State will have full power to prohibit gambling. I hope that with this explanation they will with draw their objection to this entry.

[The motion was adopted. Entry 45 was added to the State List.]

ENTRY 38—*(contd.)*

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***The Honourable Dr. B. R. Ambedkar:** May I request you to go back to entry 38 and to amendment No. 311 standing in the name of Pandit Lakshmi Kanta Maitra? I heard, Sir, that you were pleased to direct Mr. T. T. Krishnamachari to have this entry held back, but I am prepared to accept the amendment suggested by my honourable Friend, Pandit Maitra.

Mr. President: Very well. The question is :

"That entry 38 of List II be transferred to List III."

(The amendment was adopted.)

Entry 38 was transferred to the Concurrent List.

ENTRY 46

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†The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment. As our system of revenue assessment is at present regulated, it would upset the whole of the provincial administration. The matter may, at a subsequent stage be investigated either by Parliament or by the different provinces, and if they come to some kind of an arrangement as to the levy of land revenue and adopt the principles which are adopted in the levy of income-tax, the entry may be altered later on but today it is quite impossible. The matter was considered at great length in the

*CAD, Vol. IX, 2nd September 1949, p. 918.

†*Ibid.,* p. 919.

Conference with the Provincial Premiers and they were wholly opposed to any change of the place which has been given to this entry.

[Two amendments were negatived. The motion was adopted Entry 46 was added to the State List.]

ENTRY 48

Shri Brajeshwar Prasad : Sir, I beg to move:

"That in amendment No. 3631 of the List of Amendments, for the word 'deleted' 'the words and figure 'transferred to List I' be substituted."

Prof. Shibban Lal Saksena : I also move my amendment No. 316 :

"That entry 48 of List II be transferred to List III."

The Honourable Dr. B. R. Ambedkar : I do not accept that.

[Both amendments were rejected. Entry 48 was added to the State Listed.]

ENTRY 49

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***The Honourable Dr. B. R. Ambedkar :** For the reasons which I have given while dealing with entry 46, I do not accept the amendment.

Mr. President : The question is :

"That in amendment No. 3632 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That entry 49 of List II be transferred to List III."

[The amendment was negatived. Entry 49 was added to the State List.]

ENTRY 50

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 50 of List II, the words 'or roads' be added at the end."

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

"That in entry 50 of List II, the words 'or roads' be added at the end."

[The amendment of Dr. Ambedkar was adopted. The motion was adopted. Entry 50, as amended, was added to the State List.]

ENTRY 52

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‡The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in entry 52 of List II, the words 'non-narcotic drugs' be omitted."

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*CAD, Vol. IX, 2nd September 1949, p. 920.

†*Ibid.,* p. 920.

‡*Ibid.,* p. 922.

This is merely consequential.

[The amendment was adopted. The motion was adopted. Entry 52, as amended was added to the State List.]

ENTRY 56

***Prof. Shibban Lal Saksena :** Sir, I move :

"That entry 56 of List II be transferred to List III and the following explanation be added at the end :—

'*Explanation.*—Nothing in this entry will be construed as limiting in any way the authority of the Union to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.' "

* * * * *

†**The Honourable Dr. B. R. Ambedkar :** Sir, I think this amendment is rather based upon a mis-conception. This entry is a purely provincial entry. It cannot limit the power of the Centre to levy Income-tax. On the other hand, this entry 56 may be so worked as to become an encroachment upon Income-tax that is leviable only by the Centre. You may recall, Sir, that I introduced an amendment in article 256 to say that any taxes levied by the local authorities shall not be deemed to be Income-tax. This amendment is not necessary.

Prof. Shibban Lal Saksena : I do not press the amendment, Sir.

(The amendment was, by leave of the Assembly, withdrawn.)

[Entry 56 was added to the State List.]

ENTRY 58

‡**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

"That for entry 58 of List II, the following entries be substituted :—

'58. Taxes on the sale or purchase of goods.

58-A. Taxes on advertisements.' "

We are trying to cut out the word 'turnover'.

* * * * *

#**Shri V. L. Muniswamy Pillay** (Madras : General)**:** I move :

"That with reference to amendment No. 3638 of the List of Amendments, in entry 58 of List II, after the words 'purchase of goods' the words 'other than Newspapers' and after the words 'taxes on advertisements' the words; 'other than those appearing in Newspapers' be inserted respectively."

Shri Deshbandhu Gupta (Delhi)**:** I suggest this may be also held over.

Mr. President : This was a question which was raised yesterday. I held it over for my ruling.

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*CAD, Vol. IX, 2nd September 1949, p. 923.

†*Ibid.,* p. 923.

‡*Ibid.,* p. 923.

#*Ibid.,* p. 924.

The Honourable Dr. B. R. Ambedkar : I suggest that amendment No. 122 might be treated as an independent thing which may be brought in by an additional entry. Then subsequently the Drafting Committee may work the two things together if accepted. Subject to that, this entry may go. Those interested in 122 may be permitted to bring in this in the form of an additional entry.

Mr. President : Your point is not touched so far as newspaper and advertisement is concerned.

Shri Deshbandhu Gupta : If it is felt that the Drafting Committee should provide this somewhere else then it would become difficult to revise the past, once a decision is taken by the House on this entry.

The Honourable Dr. B. R. Ambedkar : Before we conclude discussion of the three Lists this matter may be brought up.

Mr. President : I am prepared to allow this to be taken up separately when we take up 88-A which we held over yesterday. So the position is that the question relating to advertisement is held over, but apart from that, this entry is to be put to vote, as amended by Dr. Ambedkar.

Prof. Sibban Lal Saksena : When a ruling is pending how can it be passed?

Shri Deshbandhu Gupta: It will be simpler if it is held over.

Mr. President: Well, let it be held over. We will take it up along with 88-A which we held over yesterday.

Entry 58 of List II was held over.

ENTRY 59

***Mr. President :** Entry 59.

The Honourable Dr. B. R. Ambedkar : I move :

"That in entry 59 of List II, the following be added at the end :—

'Subject to the provinces of entry 21 of List III' "

In List III we are going to say that the Centre should have the power to lay down the principle of taxation.

[The motion of Dr. Ambedkar was adopted. Entry 59, as amended, was added to the State List.]

ENTRY 64

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That entry 64 of List II be deleted."

That is taken in the Concurrent List.

[The motion was adopted. Entry 64 of List II was deleted from the State List.]

*CAD, Vol. IX, 2nd September 1949, p. 924.

†*Ibid.,* p. 925.

ENTRY 67

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, this matter will be covered by the Part of the Constitution which we propose to add to the existing Draft, the part where all the payments that are to be made to the rulers will be dealt with, and for the present I do not see any necessity for any such amendment. I think my Friend, after seeing that part which we propose to introduce by way of an amendment, may see whether his object is carried out by our proposal. If not, he may be quitre in order in moving an amendment to that part when that part comes before the House.

Kaka Bhagwant Roy : Sir, I wish to withdraw my amendment. (The amendment was, by leave of the Assembly, withdrawn.)

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ENTRY 2-A

†Mr. President : Then we come to entry 2-A. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 2 of List III, the following entry be inserted :—

'2A. Preventive detention for reasons connected with stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention.' "

* * * * *

SEVENTH SCHEDULE—*(contd.)*

LIST III

(Concurrent List)

ENTRY 2-A

‡Mr. Vice-President: **(Shri V. T. Krishnamachari)**: We are now doing entry 2-A of the Concurrent List.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Mr. Vice-President, Sir I would seek your permission to make a verbal change in my amendment No. 290. No. 289 has been moved by Mr. Kamath. I wish to move the next entry and I seek your permission to make a slight verbal alteration I know that the amendment will never be accepted—that it will not even be considered. So there is no harm in making the amendment look better. May I have your permission to substitute for the words "overthrow of the Government by force" in my amendment, the words

*CAD, Vol. IX, 2nd September 1949, p. 926.

†*Ibid*., p. 926.

‡*Ibid.,* 3rd September 1949, pp. 929-930.

"security of the State" ? The wording "security of the State" seems to be more proper and the change is only verbal.

Mr. Vice-President: Yes.

Mr. Naziruddin Ahmad : Sir, I beg to move ...

The Honourable Dr. B. R. Ambedkar: (Bombay : General): Sir, may I suggest to my Friend that if he is prepared to accept the wording as I suggest now, namely, "connected with the security of the State" instead of the words "connected with stability of the Government established by law" I shall be prepared to accept it, because I find that that is exactly the language we have used in amended entry 3 in List I—We have used the word "security of India" there. If my Friend is satisfied with the wording I have now suggested I shall be prepared to accept it.

Mr. Naziruddin Ahmad : I am grateful to Dr. Ambedkar, but this is exactly the change which I was asking to the Vice-President to permit me to make.

The Honourable Dr. B. R. Ambedkar : Your words were different.

Mr. Naziruddin Ahmad : I was going to move an amended amendment and that is exactly on the lines, word for word, as the one that Dr. Ambedkar now suggests.

The Honourable Dr. B. R. Ambedkar : Then there is nothing to speak about it. If my honourable Friend will move the amendment as I have suggested then I am prepared to accept it.

Mr. Naziruddin Ahmad : I must move my amendment.

Mr. Vice-President: As. Dr. Ambedkar is accepting it, is it necessary for the honourable Member to move the amendment and speak on it?

Mr. Naziruddin Ahmad : If my honourable Friend fails to recognize that I was going to move an amendment which is correct and exactly corresponds to his ideas, I cannot help it. But let me move my amendment.

Sir, I beg to move:

> "That in amendment No. 124 of List I (Sixth Week), in the proposed new entry 2-A of List III, for the words "stability of the Government" the words "security of the State" be substituted."

The expression "stability of the Government" is not proper...

The Honourable Dr. B. R. Ambedkar : I do not think any argument is needed as I am accepting the amendment.

Mr. Naziruddin Ahmad : I know. But there is the House. I will say only one or two words. The expression "stability of the Government" is rather vague in the context of the new entry proposed by Dr. B. R. Ambedkar, namely, "preventive detention for reasons connected with the

stability of the Government". "Government" and "State" are different things.

The Honourable Dr. B. R. Ambedkar : That is the reason why I have accepted it.

Mr. Naziruddin Ahmad : But, Sir, he has not made it clear as to why he has accepted it

The Honourable Dr. B. R. Ambedkar : I have said that "security of the State" is the proper expression. So there is no necessity of an argument.

Mr. Vice-President : The amendment proposed by the honourable Member having been accepted, there is no need for elaborate arguments.

Mr. Naziruddin Ahmad : But the House should know. Why should there be so much nervousness about the exposure of bad drafting? That is the point.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend is satisfied with an admission on my part that I have made a mistake I am prepared to make it.

Mr. Naziruddin Ahmad : It should be appreciated not merely by the House but by the world at large. Drafted as it is, "stability of the Government" may mean insecurity of the Ministry for which they might imprison the opposition.

The Honourable Dr. B. R. Ambedkar : Very well, we have bungled. Is that enough?

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***The Honourable Dr. B. R. Ambedkar :** Sir, the amendment as amended has to be put and not as in the Notice Paper.

Mr. Vice-President: I will now put amendment No. 124 as revised by Dr. Ambedkar. The question is :

> "That after entry 2 of List III, the following entry be inserted :—
>
> '2-A. Preventive-detention for reasons connected with the security of the State and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention.' "

(The motion was adopted.)

Entry 2-A, as amended, was added to the Concurrent List.

ENTRY 3

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

> "That for entry 3 of List III, the following entry be substituted :—

*CAD, Vol. IX, 3rd September 1949, p. 831.

†*Ibid*., p. 931.

'3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 2A of this List.' "

Mr. Naziruddin Ahmad : I am not moving amendment No. 291.

Mr. Vice-President : Amendment No. 292. The Member is not present and the amendment is not therefore moved.

I will put Dr. Ambedkar's amendment to vote.

[The amendment was adopted. Entry 3, as amended, was added to the Concurrent List.]

ENTRY 4

***The Honourable Dr. B. R. Ambedkar :** I Move :

"That in entry 4 of List III, the words and figures 'for the time being specified in Part I or Part II of the First Schedule' be deleted."

[Entry 4 as amended, by Dr. Ambedkar's amendment was added to the Concurrent List.]

ENTRY 6

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†The Honourable Dr. B. R. Ambedkar : Sir, there can be no doubt that the amendment of my honourable Friend, Dr. Deshmukh, in so far as it seeks to interpolate certain words dealing with the protection of children in entry 6 are out of place because entry 6 no doubt refers to infants and minors, but it has to be borne in mind that taking the entry as a whole, that entry deals with status. In so far as the status of infants and minors are concerned, these categories are included in entry 6, but "care and protection of destitute and abandoned children and youth" are not germane to their status.

Dr. P. S. Deshmukh : That was exactly why I had wanted to introduce an independent entry. There is an amendment already in my name which seeks to have an additional entry separately.

The Honourable Dr. B. R. Ambedkar : I was just going to deal with the amendment moved by him. These words could not be interpolated in this entry 6, without seriously damaging the structure of that entry No. 6. Therefore at this stage I certainly cannot accept the proposition of interpolating these words.

Now, Sir, I will deal with the general question of the protection of children. There can be no doubt about it that every Member in the House including myself and the members of the Drafting Committee could ever take any exception to the protection of children being provided for by the

*CAD, Vol. IX, 3rd September 1949, p. 931.

†*Ibid.,* pp. 935-936.

State, and there can by no difference of opinion; but the only question is whether in the list as framed by the Drafting Committee that matter is not already covered. In framing these entries, what we have done in to mention and categorize subjects of legislation and not the objects of purposes of legislation.

Protection of children is a purpose which a legislature is entitled to achieve if in certain circumstances it thinks that it must do so. The question is whether under any of these entries, it would not be possible for the State to achieve that purpose, namely, the protection of children.

It seems to me that any one of these entries which are included in List II could be employed by the State for the purpose of framing laws to protect children. For instance, under entry 2 of List II, administration of justice, it would be open for the State to establish juvenile courts for children.

Dr. P. S. Deshmukh : That is not what I meant. I never referred to juvenile Courts.

The Honourable Dr. B. R. Ambedkar : For instance, take prisons and reformatory and Borstal institutions, they may be empowered to establish special kinds of prisons where there would be, not the principle of punishment, but the principle of reformation. Take the case of education.

Shrimati G. Durgabai : May I submit, Sir, the case of delinquent children stands absolutely on different footing and from destitute and abandoned children?

The Honourable Dr. B. R. Ambedkar : As I was saying entry 18, which deals with education in List II, could be used by the State for the purpose of establishing special kinds of schools for children including even abandoned children. Under entry 42, dealing with the incorporation of societies and so on, it would be open to the State to register societies for the purpose of looking after children or they may themselves start some kind of corporation to do this.

Therefore, if my friends contend that the statement, which I am making in all sincerity, that there is every kind of provision which the State may make for the purpose of protecting children under the entries which are included in List II, I think there is no purpose, in having a separate entry dealing with the protection of children. As I stated, protection of children cannot be a subject of legislation; it can be the object, purpose of legislation.

Dr. P. S. Deshmukh : You have made provision for the protection of wild birds, even!

The Honourable Dr. B. R. Ambedkar : I can quite see both of my Friends are very persistent in this matter. I would therefore request them

to withdraw their amendment on the assurance that the Drafting Committee in the revising stage will go into the matter and if any such entry can be usefully put in any of the Lists, they will consider that matter and bring a proposal before the House. At this stage, I find it rather difficult to accept it because I have not had sufficient time to devote myself to a full consideration of the subject which is necessary before such an entry is introduced.

Mr. Vice-President : Does Dr. Deshmukh wish to press his amendment?

Dr. P. S. Deshmukh : I would like to request Dr. Ambedkar at least to say that by the time my next amendment for in independent entry is reached, he will be able to say something more favourable than he has been able to say now.

The Honourable Dr. B. R. Ambedkar : I will consider the whole matter.

[The amendment was withdrawn. Entry 6 was added to the Concurrent List.]

ENTRY 15

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"that for entry 15 of List III, the following entry be substituted :—

'15. Actionable wrongs'."

The words which I seek to omit are really unnecessary.

(The motion was adopted. Entry 15 as amended was added to the Concurrent List.)

* * * * *

NEW ENTRY 17-A

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 17 of List III, the following entry be inserted :—

'17-A. Vocational and technical training of labour'."

[Entry 17-A as amended was added to the Concurrent List.]

ENTRY 20

‡**The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That for entry 20, the following entry be submitted:

'20. Drugs and poisons, subject to the provisions in entry 62 of List I with respect to opium'."

(Mr. Kamath did not move his amendment.)

(The amendment was adopted.)

(Entry 20, as amended, was added to the Concurrent List.)

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*CAD, Vol. IX, 3rd September 1949, p. 937.

†*Ibid.,* p. 939.

‡*Ibid.,* p. 939.

ENTRY 21

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 21 of List III, the following entry be substituted:—

'21. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied'."

(The amendment was adopted.)

Entry 21, as amended, was added to the Concurrent List.

NEW ENTRY 25-A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 25 of List III, the following new entry be inserted :—

'25-A. Vital statistics including registration of births and deaths'."

[The motion was adopted. Entry 25A was added to the Concurrent List.]

ENTRY 26

†The Honourable Dr. B. R. Ambedkar: Sir, I beg to move :

"That for entry 26 of List III the following entry be substituted :—

'26, Welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits'."

[The amendment was adopted. Entry 26, as amended, was added to the Concurrent List.]

NEW ENTRY 26-A

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‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 26 of List III, the following entry be inserted :—

'26-A. Social insurance and social security'."

(Entry 26-A was added to the Concurrent List.)

NEW ENTRY 26-B

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#The Honourable Dr. B. R. Ambedkar : Sir, may I explain? There seems to be a certain amount of confusion and misunderstanding about the entries in the List. With regard to my Friend Dr. Deshmukh's amendment, he wants welfare of peasants, farmers and agriculturists of all sorts. Well, I would like to have some kind of a clear conception of what these omnibus words, "agriculturists of all sorts" mean. Does he want that the State should also undertake the Welfare of zamindars who pay Rs. 5 lakhs as land revenue?

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*CAD, Vol. IX, 3rd September 1949, p. 940.

†*Ibid.,* p. 940.

‡*Ibid.,* p. 940.

#*Ibid.,* p. 944.

Shri R. K. Sidhva : You can drop those words.

***The Honourable Dr. B. R. Ambedkar :** It will also include malguzars. Before I accept any entry, I must have in my mind a clear and consistent idea as to what the words mean. The word "agriculturists" has no precise meaning. It may mean a rack-renter. It may mean a person who is actually a cultivator. It may mean a person who has got two acres. It may also mean a person who has five thousand acres, or five lakhs acres.

Dr. P. S. Deshmukh : I am prepared to omit that particular expression.

The Honourable Dr. B. R. Ambedkar : That is one difficulty I find. The second point is my Friend Dr. Deshmukh does not seem to pay much attention to the different entries and what they mean. So far as agriculture is concerned, we have got two specific entries in List II—No. 21 which is Agriculture and No. 24 which is Land. If he were to refer to these two entries he will find...†

Dr. P. S. Deshmukh : What fallacious arguments are being advanced ! For that matter, Labour welfare is a specific entry and yet you wanted separate provision for their vocational training? Do not advance fallacious arguments.

The Honourable Dr. B. R. Ambedkar : It is not my business to answer questions relating to the faults of administrations. I am only explaining what the entries mean. As I said, we have already got two entries in List II. Entry 21 is there for Agriculture "including agricultural education and research, protection against pests and prevention of plant diseases".

Dr. P. S. Deshmukh : Then why do you want "welfare of labour"?

The Honourable Dr. B. R. Ambedkar : Why can't you have some patience? I know my job. Do you mean to say I do not know my job? I certainly know my job.

Dr. P. S. Deshmukh : I know your attitude also. Do not try to fool everybody!

The Honourable Dr. B. R. Ambedkar : There is already an entry which will empower any State to do any kind of welfare work not merely with regard to agriculture but with regard to agriculturists as well. In addition to that we have entry 24 where it is provided that laws may be made with regard to "rights in or over land, land tenures including the relation of land-lord and tenant". All the economic interests

*CAD, Vol. IX, 3rd September 1949, pp. 944-946.

†Dots indicate interruption in original.

of the peasants can be dealt with under this entry. Therefore, so far as entries are concerned there is nothing that is wanting to enable the Provincial Governments to act in the matter of welfare of agricultural classes.

Then I come to the question raised by my Friend Mr. Sidhva which, I think, is a very legitimate question. Hill question was what was the connotation of the word "labour" and he asked me a very definite question whether 'labour' meant both industrial as well as agricultural labour. I think that was his question. My answer is emphatically that it includes both kinds of labour. The entry is not intended to limit itself to industrial labour. Any kind of welfare work relating to labour, whether the labour is industrial labour or agricultural labour, will be open to be undertaken either by the Centre or by the Province under entry 26.

Similarly, conditions of work, provident funds, employers' liability workmen's compensation, health insurance, including invalidity pensions—all these matters—would be open to all sorts of labour, whether it is industrial labour or agricultural labour. Therefore, so far as this entry, No. 26, is concerned, it is in no sense limited to industrial labour and therefore the kind of amendment which has been proposed by my Friend Dr. Deshmukh is absolutely unnecessary, besides; its being—what I might call—vague and indefinite, to which no legal connotation can be given.

Dr. P. S. Deshmukh : Is there no class of persons except agricultural labour in this country? Has Dr. Ambedkar ever heard of a class called "farmers" and "peasants" ?

The Honourable Dr. B. R. Ambedkar: Their welfare will be attended to under entries 21 and 24 of the Provincial List, as I have already explained.

[Dr. P. S. Deshmukh's amendment was negatived. Dr. Ambedkar's amendment was adopted. Entry 27, as amended was added to the Concurrent List.]

ENTRY 27

***The Honourable Dr. B. R. Ambedkar:** Sir, I move :

"That for entry 27 of List III, the following entry be substituted :—

'27. Employment and unemployment' ".

The amendment was adopted.

Entry 27, as amended, was added to the Concurrent List.

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*CAD, Vol. IX, 3rd September 1949, p. 946.

ENTRY 28

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***Mr. Vice-President :** I will now put the question.

The Honourable Dr. B. R. Ambedkar : I want to say a word. The words "trade union" with regard to welfare of labour have a very wide connotation and may include trade unions not only of industrial organisations but may also include trade unions of agricultural labour. That being so, I am rather doubtful whether by introducing the word 'industrial' here, we are not trying to limit the scope and meaning of the term 'trade union'. But I am not moving any amendment. I would like to reserve an opportunity to the Drafting Committee to examine the term and to consider this. I want the entry to stand as it is now. I have expressed my doubt that in view of the wide connotation of 'trade union', a part of the entry may require amendment.

Mr. Vice-President: Subject to what Dr. Ambedkar says, I put entry 28 to vote. The question is :

"That entry 28 stand part of List III.

(The motion was adopted.)

Entry 28 was added to the Concurrent List.

NEW ENTRY 28-A

†**The Honourable Dr. B. R. Ambedkar :** I move :

"That after entry 28 of List III, the following new entry be inserted :—

'28-A. Commercial and industrial monopolies, combines and trusts'."

The motion was adopted. Entry 28-A was added to the Concurrent List.

ENTRY 29

‡**Mr. Vice-President:** As there is no amendment to entry 29, I will put it to vote.

Entry 29 was added to the Concurrent List.

Dr. P. S. Deshmukh : Sir, a part of this amendment of mine was very kindly accepted yesterday. But, so far as the wording is concerned, we have yet to decide it. When we were discussing the State List, it was decided that we should transfer 'adulteration food' to List III and therefore it would probably be relevant if we take up the wording of this entry at this stage. At the same time I would like that the first amendment of mine should also be accepted.

*CAD, Vol. IX, 3rd September 1949, p. 947.

†*Ibid.,* p. 947.

‡*Ibid.,* p. 948.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that the introduction of entry 29A has already been covered by entry 61A in List I which has been passed by the House in much wider terms? The words used are "goods" which will include agricultural products, etc. Similarly 29B was accepted yesterday on the motion of Mr. Maitra and it is now entry 20A in List III.

Dr. P. S. Deshmukh : I accept the first part of my friend's suggestion. I do not move for additing 29A. But I am not clear whether it is the mere transposition of the entry as it stood in List II that is proposed?

The Honourable Dr. B. R. Ambedkar : It is transferred to Concurrent List as 20A. That was the motion passed by the House.

Dr. P. S. Deshmukh : Would it not be better to enlarge its scope?

The Honourable Dr. B. R. Ambedkar : 'Adulteration of food' includes everything, I think.

Dr. P. S. Deshmukh : If that is so, I do not move this amendment.

Mr. Vice-President : Then I will put entries 30 and 31 to vote.

Entries 30 and 31 were added to the Concurrent List.

NEW ENTRY 31-A

***The Honourable Dr. B. R. Ambedkar :** I move :

"That after entry 31, the following new entry be inserted :—

'31-A. Ports, subject to the provisions of List I with respect to major ports'."

[Motion was adopted. Entry 31-A was added to the Concurrent List]

ENTRY 32

†**The Honourable Dr. B. R. Ambedkar :** I move:

"That entry 32 of List III be deleted."

This has been transferred to List I.

Entry 32 was deleted from the Concurrent List.

ENTRY 33

‡**The Honourable Dr. B. R. Ambedkar :** I move :

"That entry 33 of List III be deleted."

As I said, this also has been transferred to List I.

Entry 33 was deleted from the Concurrent List.

*CAD, Vol. IX, 3rd September 1949, p. 948.

†*Ibid.,* p. 949.

‡ *Ibid.,* p. 949.

ENTRIES 33A AND 33B

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 33 of List III, the following new entries be inserted :—

'33A. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

33B. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.' "

(Amendment No. 296 was not moved.)

[Entries 33A and 33B were added to the Concurrent List.]

ENTRY 34

†Shri Brajeshwar Prasad: ...Sir, there is another aspect of the question to which I would like to draw the attention of the House. Entry 34 reads thus:

"Economic and social planning."

What about political planning?

Some Honourable Member : It will be too disastrous.

The Honourable dr. B. R. Ambedkar : It can be done by way of amendment of the Constitution.

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‡The Honourable Dr. B. R. Ambedkar : Sir, I am very sorry but I cannot accept this amendment moved by Shrimati Purnima Banerji. The introduction of the word "education" seems to me to be quite unnecessary. The word "social" is quite big enough to include anything that relates to society as a whole except, of course, religious planning, and a contradiction would be only between 'social' and 'religious'. What the State would not be entitled to plan would be 'religions'; everything else would be open to the State.

With regard to the observations of my honourable Friend Shri Rohini Kumar Chaudhuri, I think he will realize that this entry finds a place in the Concurrent List and the State also would have the freedom to do its own planning in its own way. It is only when the Centre begins to have a plan and if that plan conflicts with the plan prepared by the State that the plan prepared by the State will have to give way and this is in no sense an encroachment upon the planning power of the State and therefore, this entry, I submit, should stand in the language in which it stands now.

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*CAD, Vol. IX, 3rd September 1949, p. 949.

†*Ibid*., p. 950.

‡*Ibid,* p. 952.

Mr. Vice-President: The question is :

"That for entry 34 of List III, the following be substituted :—

'34. Economic, educational and social planning'."

The amendment was negatived.

[Entry 34 was added to the Concurrent List.]

ENTRY 34-A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That after entry 34 of List III, the following new entry be inserted :—

'34A. Archaeological sites and remains'."

This would be Concurrent.

[Entry 34A was added to the Concurrent List.]

ENTRY 35

†**The Honourable dr. B. R. Ambedkar :** Sir, I move :

"That for entry 35 of List III, the following entry be substituted :—

'35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given.'"

(The amendment was adopted)

Entry 35, as amended was, added to the concurrent List.

ENTRY 35-A

‡**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 35 of List III, the following new entry be inserted :—

'35A. Trade and commerce in and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.' "

(The motion was adopted.)

Entry 35A was added to the Concurrent List.

ENTRY 36

#**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for entry 36 of List III, the following entry be substituted :—

'36. Industries and statistics for the purposes of any of the matters specified in list II or List III.' "

Mr. President : There is no amendment.

[Entry 36 was added to the Concurrent List.]

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*CAD, Vol. IX, 3rd September 1949, p. 952.

†*Ibid.,* p. 953.

‡*Ibid.,* p. 953.

#*Ibid.,* p. 953

NEW ENTRY

***Mr. President:** There is new entry proposed by Pandit Govind Ballabh Pant.

(Amendment No. 144 was not moved)

†**Dr. P. S. Deshmukh :** Sir, I move :

'That the following new entry be added in List III:—

'Protection of children and youth from exploitation and abandonment, *vide* article of *(vi).*' "

Sir, I had moved similar amendments on two occasions...

The Honourable Dr. B. R. Ambedkar: This amendment was considered along with other amendments and I gave a reply telling my friend that this matter will be considered by the Drafting Committee. He was then agreeable.

Dr. P. S. Deshmukh : My only submission is that the wording may be altered as the Drafting Committee may decide but provisionally the entry may be accepted as proposed by me. It should not merely be left to be considered by the Drafting Committee. Any wording that may be suitable may be put in; but there should be an entry which refers to the protection of children and youth from exploitation and abandonment. I hope Dr. Ambedkar will kindly accept this.

The Honourable Dr. B. R. Ambedkar : I have told my friend that if I find that the purpose which he has in mind is not covered by any of the other entries, I will do my best to introduce some such entry. I have given him that assurance.

Dr. P. S. Deshmukh : This is a question to which I and at least some Members of the House attach very considerable importance. ... I hope, Sir, no damage will be done if we have an entry like the one I have proposed in the case of children.

The Honourable dr. B. R. Ambedkar : I will give my best consideration to the matter. I am in entire sympathy with its object. What more can I say?

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‡**Mr. Naziruddin Ahmad :** One speaker has just now given out that prostitution should be entirely prohibited...

The Honourable Dr. B. R. Ambedkar : Is this a question which we need debate? The only question is whether there is power with the State or with the Centre or should it be Concurrent. How the power is to be

*CAD, Vol. IX, 3rd September 1949, p.954.

†*Ibid.,* p. 954.

‡*Ibid.,* pp. 957-958.

exercised whether to permit partially or prohibit completely is a matter for each legislature, which we must leave to the legislature.

Mr. Naziruddin Ahmad : My submission is that it is relevant. The amendment provides for "regulation and control of prostitution."...

Shri V.I. Muniswamy Pillay (Madras : General): I wish to speak, Sir.

Mr. President: Closure has been moved. The question is :

"That the question be now put".

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, there is enough power given to the State under these entries to regulate these matters, namely, either for dealing with public houses or having some large-scale farming. If my Friend, Dr. Deshmukh were to refer to List II, entry 1, which deals with public order, and entry 4 which deals with police and the Concurrent entry which deals with criminal law, he will find that there is more than enough power given to regulate these matters. If he were to refer to entry 24 dealing with land, entry 21 dealing with agriculture in the State List, he will find that there is more than enough power in the States to have state farms or whatever they like.

Therefore, the only question that remains, is this, whether this subject relating to the creation of farms and the regulation of public houses should be in the Concurrent List. In my judgement, the criterion to decide whether this matter should be in the Concurrent List or in the State List is whether these matters are of all-India concern or of purely local concern. In my judgement prostitution, the regulation of public houses, and creation of farms are matters of local concern and it is therefore better to leave them to be dealt with by the States. They have got more than enough power for that. I do not know how the Centre can do the job. The Centre has not got any agricultural land. If the Centre wants to establish a farm, the Centre has to acquire the property from the farmers. The same thing could be done by the State. I do not see what purpose would be served by having these entries in the Concurrent List; and it must also be remembered that our States which we call States are far bigger than many States in Europe.

Shrimati G. Durgabai: Will Dr. Ambedkar make one point clear? The entry speaks of regulation or prohibition of prostitution. I do not understand the meaning of "regulation" here, and I think it should be complete prohibition.

The Honourable Dr. B. R. Ambedkar : The States can regulate them and also prohibit them. The States can do it.

(All amendments were negatived)

NEW ENTRY 88-A

***The Honourable Dr. B. R. Ambedkar :** I am prepared to accept the amendment moved by the 58 gentlemen.

Shri Mahavir Tyagi : May I inform you, Sir, that a large section of the House would like the deletion of the entry and so you might kindly agree to hold over the item for further consideration of the Drafting Committee?

The Honourable Dr. B. R. Ambedkar : Sir, if the mover of this amendment cares to move it, I am prepared to accept it.

Shri Ramnath Goenka (Madras : general)**:** Sir, the other day, you requested Dr. Ambedkar to be ready with his alternative proposal.

The Honourable dr. B. R. Ambedkar : He did not say anything of that kind.

Shri Ramnath Goenka : This item will take some time, Sir.

The Honourable Dr. B. R. Ambedkar : Sir, the amendment is here.

Shri Ramnath Goenka: What I suggest is that we could get in touch with the Drafting Committee and come to a formula acceptable to all.

The Honourable dr. B. R. Ambedkar : This is a formula which you have proposed.

Shri Ramnath Goenka: We will have the benefit of consultation with you.

The Honourable dr. B. R. Ambedkar : Sir, I am prepared to accept entry 88A if they move it.

Shri S. Nagappa : It has been moved.

The Honourable Dr. B. R. Ambedkar : It has not been moved yet. That was entry 88A in List I—not in the State List. Objection was taken that it was not in order and it was not moved. Therefore, if Mr. Goenka wishes to move it...†

Shri Deshbandhu Gupta: Sir, I formally move that the matter be held over.

The Honourable Dr. B. R. Ambedkar : Why? We tried to finish the whole list. That is why we hurried up, not allowing many Members

*CAD, Vol. IX, 3rd September 1949, p. 960-963.

†Dots indicate interruption.

to speak to the extent they used to. Now that we have got a clear-cut amendment signed by many people I do not see why it should be held over.

Shri Deshbandhu Gupta : It is not in a clear-cut form as Dr. Ambedkar himself saw something objectionable in the draft and was prepared to help us with a better draft.

Mr. President : As I understood Dr. Ambedkar the other day, the only question was whether it should be in List I or List II. He said the question of policy had to be decided.

The Honourable Dr. B. R. Ambedkar : If you want to put it in List I, I am prepared to accept it.

The President : So far as the particular place where this entry will go, that is to be left to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : The whole trouble is this. This entry was originally in List II. There objection was that it would not be in List II but it should be in this form in List I. I am prepared to accept that if they want it.

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Shri Deshbandhu Gupta : Sir, on a point of information, may I inquire as to what will happen to entry No. 58 in the second List which was held over yesterday?

Mr. President : It would go.

Shri Deshbandhu Gupta : It was held over yesterday because these two go together.

Mr. President : It was held over because there was an amendment which wanted to transfer this to List II. If it is passed in List I then that amendment will be out of order.

Shri Deshbandhu Gupta : There are two amendments. There is one that this may be transferred to List I and there is another defining the scope of entry 58. The amendment was held over yesterday because this matter was not before the House at that time. They must go together.

The Honourable dr. B. R. Ambedkar : I am not bound to accept it. They do not go together. I refuse to accept that.

Mr. President: There was an amendment, No. 122, consideration of which was held over because of this amendment. If the amendment which has been just moved is accepted then in that case amendment No. 122 becomes out of order, and the only proposition before the

*Dots indicate interruption.

House will be Dr. Ambedkar's proposition namely amendment No. 121.

Shri Ramnath Goenka : Will there not be a consequential amendment in List II? In the State List certain powers are given to the State for taxes on sale as well as on advertisement. If this is transferred to List I, then the consequential amendment of which we have given notice...

Mr. President : The notice is that it be included in List I. If it is taken in List I then it goes out.

Shri Ramnath Goenka : But the exception will have to be provided for in List II in the entry; sale of goods excepting newspapers.

Mr. President : It is not necessary.

The Honourable Dr. B. R. Ambedkar : It is not a consequential amendment at all. Both the amendments are quite independent. One amendment is that the entry should be expanded by the addition of a new entry to be called 88-A. Then there is another amendment which is amendment to my amendment to entry 58 in List II dealing with sales tax. That amendment says that the word "goods" should be so qualified as to exclude newspapers. That will be dealt with on its own merits. The immediate question we have to deal with is whether List I is to be expanded, by the addition of entry 88-A in terms as moved here.

Shri Ramnath Goenka : The position is this. We have proposed an entry in List I that taxes on newspapers including advertisements therein, should be transferred to List I and that the Provinces should not have the authority to levy and taxes on newspapers. Therefore the amendment No. 57 is a consequential amendment to the amendment No. 122 in entry 58 in List II. So both these amendments will have to be taken together. Yesterday when this question of entry 58 in List II came before us, you put it off until you gave a ruling and said a decision could be taken together on these entries.

The Honourable Dr. B. R. Ambedkar : Take them one by one. Let both the amendments be put one after the other.

Shri Ramnath Goenka: May I suggest, Sir, that we put entry 58 in List II first and then 88-A?

The Honourable Dr. B. R. Ambedkar : You can have it in any way you like, but I want to tell you that voting in a particular manner on the second amendment would be inconsistent with voting on the first in another manner. It will be open to the House to accept the one and reject the other.

Shri Ramnath Goenka : I would like to have your ruling on this matter. If you transfer the taxes on newspapers to List I then it cannot have any place in List II also. If it has a place in List I then it necessarily goes out from List II.

The Honourable Dr. B. R. Ambedkar : It will go out of List II only so far as taxes are concerned. But so far as the sale of goods is concerned it would remain. You want to get that out also? Your object, if I understand, is two fold, namely, that the newspapers should not be liable to any duty and should not be liable to any tax under the Sales Tax Act also. I am not prepared to give you both the advantages, to be quite frank.

Shri Ramnath Goenka : May I request you, Sir, to hold this matter over till Monday morning so that we can put our heads together and come to you, because whatever the interpretation, what is said, is the object of our amendment. If that object is not carried we will have to put in other amendments. But that is our intention. We are only laymen and we will be guided by Dr. Ambedkar. The entire taxation should be taken away from the Provinces to the Centre. If that purpose is not being carried out I am afraid some other amendment will have to be moved which will have the effect of carrying out our intentions. These are our intentions.

Mr. President : Dr. Ambedkar, will you object if the matter is held over?

The Honourable Dr. B. R. Ambedkar : I will be quite frank about it. I have a mandate to accept entry 88A. I am prepared to follow that mandate and accept entry 88A. I have no such mandate with regard to the other thing (amendment No. 122). I am sure that it will be difficult to accept it. To have a complete exemption from any kind of taxation on newspapers is to me an impossible proposition.

Shri Ramnath Goenka : It is not so. I want taxation to be left to the Centre and not the Provinces. If I may tell Dr. Ambedkar, the mandate was that it should be taken away from the Provinces.

The Honourable Dr. B. R. Ambedkar : You are not to interpret the mandate for me. I know what it is. It is quite clear to me.

Shri Ramnath Goenka : As it is, I am interpreting it to you. (Interruption).

Shri Deshbandhu Gupta : Since Dr. Ambedkar has referred to the mandate I may make it clear that when this question was taken

up with the authority which gave the mandate, it was absolutely clear that the two amendments went together. We wanted this tax to remain a Central tax and not a Central as well as a provincial tax.

The Honourable Dr. B. R. Ambedkar : It is not right to refer here to matters discussed elsewhere. But, as I said, I am quite prepared to abide by that mandate. The other matter was brought in surreptitiously by our friends after they heard what I said in another place as to what a mess they had made by bringing in this amendment.

Shri Ramnath Goenka : As Dr. Ambedkar suggests that we have made a mess we want a way out of the mess.

(Interruption)

Mr. President : I find there is a much feeling in the matter. So we had better take it up on some other day when the feelings are a bit cooler....

FIFTH SCHEDULE

***Mr. President :** We will take up the Fifth Schedule.

The Honourable Dr. B. R. Ambedkar : (Bombay : General): Sir, I move:

That for the Fifth Schedule, the following Schedule be substituted :—

"*FIFTH SCHEDULE*

[Article 215-A(a) and 215-B(1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

PART I

GENERAL

1. *Interpretation.*—In this Schedule, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I or Part III of the First Schedule.

2. *Executive power of a State in scheduled areas.*—Subject to the provisions of this Schedule, the executive power of a State extends to the scheduled areas therein.

3. *Report by the Governor or Ruler to the Government of India regarding the administration of the Scheduled areas.*—The Governor or Ruler of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make a report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

*CAD, Vol. IX, 5th September 1949, pp. 965-967.

PART II

Administration and Control of Scheduled Areas and Scheduled Tribes

4. *Tribes Advisory Council.—(1)* There shall be established in each State having scheduled areas therein and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom as nearly as may be, three-fourths shall be the representatives of the scheduled tribes in the Legislative Assembly of the State :

'Provided that if the number of representatives of the scheduled tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the scheduled tribes in the State as may be referred to them by the Governor or Ruler, as the case may be.

(3) The Governor or Ruler may make rules prescribing or regulating as the case may be—

(a) the number of members of the Council, the mode of their appointment and the appointment of its Chairman and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. Law *Applicable to scheduled areas.—(1)* Notwithstanding anything contained in this Constitution the Governor of Tuler, as the case may be, may by public notification direct that any particular Act of Parliament of the Legislature of the State shall not apply to a scheduled area or any part there of in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

(2) Governor or Ruler as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a scheduled area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the scheduled tribes in any such area;

(b) regulate the allotment of land to members of the scheduled tribes in such areas;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such areas;

(3) In making any regulation as is referred to in sub-paragraph *(2)* of this paragraph the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART III

SCHEDULED AREAS

6. *Scheduled Areas.—(1)* In this Constitution, the expression "scheduled areas" means such areas as the President may by order declare to be scheduled areas.

(2) The President may at any time by order—

(a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such area;

(b) alter, but only by way of rectification of boundaries, any scheduled area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a scheduled area, and any such older may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph *(1)* of this paragraph shall not be varied by any subsequent order.

PART IV

AMENDMENT OF THE SCHEDULE

7. *Amendment of the Schedule.—(1)* Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended any reference to this schedule in this Constitution shall be construed as a reference to such schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof."

I would like very briefly to explain the principal changes which have been made in the Fifth Schedule as amended and put forward before the House. The first important change is in paragraph 4 which deals with the creation of the Tribes Advisory Council. As the paragraph originally stood in the Draft Constitution, it was obligatory to have a Tribes Advisory Council in every state where there were scheduled areas or scheduled tribes. It was felt that there was no necessity by the Constitution to create an Advisory Council for a State where there were some members of the Scheduled tribes living in some part of the State but which had no scheduled area. It was felt that if there was a necessity for creating an Advisory Council for the purposes of the scheduled tribes who are not living in a scheduled area, it would be better to leave that matter to the President whether or not to creat an Advisory Council. Consequently the words "and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council". In the case of scheduled areas there is an obligation to create an Advisory Council. In the case of scheduled tribes it is not obligatory by the Constitution to create an Advisory Council but it is left to the-discretion of the President.

The other paragraph which has undergone an important change is paragraph 5. Paragraph 5 deals with the applicability of the laws made by Parliament and by the local Legislature to the scheduled areas. Paragraph 5, as it originally stood, required that if the Tribes Advisory Council directed that the law made by Parliament or made by the local Legislature should be made applicable to the scheduled areas in a modified form, then the Governor was bound to carry out the order or the decision of the Tribes Advisory Council. It was felt that it would be much better to let the Governor have the discretion in the matter of the application of the laws made by Parliament or by the local Legislature to the scheduled areas and that his discretion should not be controlled absolutely, as it was proposed to be done by the original provision contained in paragraph 5.

The other important thing to which I should like to call the attention of honourable Members is to paragraph 6. Paragraph 6, as originally drafted, set out a scheduled of what are to be scheduled areas. This provision has become necessary particularly because it is not possible at this stage to know what are going to be the scheduled areas in States in Part III. It is felt that both for meeting the difficulty to which I have referred as well as to make the provisions elastic, it would be much better to leave the power with the President rather than to have a definite part dealing with the scheduled areas.

Another important amendment to which I should like to draw attention is paragraph 7 which is included in Part IV and which deals with the Amendment of the Fifth Schedule. Originally, as the paragraph stood, there was no provision for the amendment of the Fifth Schedule. It is now provided that Parliament may amend this Schedule and I think it is desirable that Parliament should have the power to amend this Schedule. It is no use of creating a sort of a State within a State and it is not desirable that this kind of special provision under which certain tribes would be excluded from the general operation of the law made by the legislature as well as Parliament and the provision contained in sub-paragraph (*2*) of paragraph 5, where, so to say, 'the Governor is constituted a law-making body for making regulations of certain character which are mentioned in *(a), (b)* and *(c)* and which are to have over-riding powers in so far as they relate to these matters over any law made by Parliament or by the legislature, should not be sterotyped for all times and that it should be open to Parliament to make such changes as time and circumstances may require. Consequently, it has been provided in the new Paragraph 7 of Part

IV that Parliament shall have such power to make such amendments as it finds necessary and any such amendment of the Schedule shall not be deemed to be an amendment of the Constitution, but shall be made by the ordinary process of law.

I may mention that the Drafting Committee in putting forth this new Schedule had discussed the matter with the representatives of the provinces who are concerned with this particular matter, namely of scheduled areas and scheduled tribes. We had also taken into consideration the opinion of my honourable Friend, Mr. Thakkar, who knows a great deal about this matter and I may say without contradiction that this new schedule has the approval of all the parties who are concerned in this matter, and I hope that the House will have no difficulty in accepting the new Schedule in place of the old one.

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***Mr. President :** So far as I can see, there is no other amendment to the Fifth Schedule as now proposed.

Prof. Shibban Lal Saksena : I have some amendments.

Mr. President : Coming at the last moment, these amendments have not been circulated to Members. They came in at 8.58 this morning.

The Honourable Dr. B. R. Ambedkar : I have no idea about them. These should not be allowed.

Mr. President : If you have any amendments, you may make your observations. I may tell the House that I have a set of new amendments sent in by Prof. Shibban Lal Saksena and Dr. Deshmukh.

The Honourable Dr. B. R. Ambedkar : We have no copies. We do not know what they are talking about.

Mr. President : Dr. Deshmukh's amendment came in at 9.20 in the morning. Prof. Saksena's came in at 8.58 in the morning. Technically you are just before the commencement of the session but I think it is very inconvenient to the other Members.

Dr. P. S. Deshmukh (C. P. & Berar: General)**:** My amendments are of a drafting nature.

Mr. President : Very well, they will be handed over to the Drafting Committee. I do not think there is any substance in any of your amendments, Prof. Saksena ?

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*CAD, Vol. IX, 5th September 1949, pp. 978-979.

***Mr. President :** I wish to close the discussion now. Does Dr. Ambedkar wish to say anything?

The Honourable Dr. B. R. Ambedkar : Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.

Mr. President : Then I shall put the amendments to vote now.

Mr. Naziruddin Ahmad : My amendments need not be put to vote, but they could be considered by the Drafting Committee.

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Paragraph 3 was added to the Fifth Schedule.

SIXTH SCHEDULE

†Mr. President : We now go to the Sixth Schedule.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in sub-paragraph *(1)* of paragraph 1, before the words, 'The tribal areas' the words 'Subject to the provisions of this paragraph' be inserted."

Originally, the draft merely said that the Tribal areas were those which were included in the table attached to this Schedule. There was no power given to define the boundaries of those areas included in the Table. It is felt that it is necessary to give the Governor the power to define the boundaries of those areas, included in the Table. In order to provide for this power for the Governor, it is necessary to add the words which are contained in this amendment.

Mr. President : Amendment number 99 also relates to paragraph 1.

The Honourable Dr. B. R. Ambedkar : May I move that?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for sub-paragraph *(3)* of paragraph 1, the following sub-paragraph be substituted :—

'*(3)* The Governor may, by public notification—

(a) include any area in Part I of the said Table,

(b) create a new autonomous district,

(c) increase the area of any autonomous district,

(d) diminish the area of any autonomous district,

(e) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

(f) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses *(b), (c), (d)* and *(e)* of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph *(1)* of paragraph 14 of this Schedule.' "

*CAD, Vol. IX, 3rd September 1949, p. 999.

†*Ibid.,* pp. 1001-1002.

In this amendment, the new things to which attention must be drawn are included in sub-clauses *(e)* and *(f)* of sub-paragraph *(3)*. As necessary because it may be required, in any particular state of affairs, that two or more autonomous districts may be united together. The power contained in sub-clause (f) is also necessary because it may be desirable to define the boundaries in case there is any particular dispute between the different tribes.

The proviso introduces a change. By comparing the proviso with the original provisos, it will be seen that there were to provisos to subparagraph *(3)*. In the first proviso, the Governor could act under clause *(b)* or clause *(c)* on the recommendation of a Commission. But, if he wanted to act under clauses *(d)* or *(e)* he was required to have a resolution of the District Councils of the Autonomous Districts concerned. It is felt that this distinction made by the two provisos for the different parts of sub-paragraph *(3)* is not necessary. It is better to make it uniform by requiring the Governor to act after consideration of the report of a Commission which is proposed to be appointed under sub-paragraph *(1)* of paragraph 14 of this Schedule.

Mr. President : As regards this Schedule, as the Schedule as a whole has not been changed but only certain amendments to some of the paragraphs have been suggested, I propose to take this paragraph by paragraph. Regarding the first para, these are the two amendments which have been moved on behalf of the Drafting Committee. I will now take the other amendments of which notice has been given. There are some printed in the second volume of the list of amendments.

(Amendments 3489, 3490 and 3491 were not moved)

There is one amendment that paragraph 1 to 16 be deleted. I do not know whether to take it.

The Honourable Dr. B. R. Ambedkar : That need not be taken.

***Mr. President :** ...Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Sir, there are just two points which have been raised in the course of the remarks made on these amendments which call for reply. The first question is the one, which was raised by Mr. Chaliha. I must say I was somewhat surprised at the amendment tabled by Mr. Chaliha, because like the Fifth Schedule the Sixth Schedule also has arisen, so to say, out of an agreement between the Drafting Committee and the Premier of Assam, my Friend,

*CAD, Vol. IX, 5th September 1949, pp. 1004-1005.

Mr. Nichols Roy and at which conference Mr. Chaliha also was present, and he accepted the new schedule as amended by the Drafting Committee. However, it cannot take long to dispel the doubt he has in his mind as to who would constitute this Commission, who would be its members, and all matters relating to the Commission. I think if Mr. Chaliha had only read carefully the wroding of the Sixth Schedule he would have seen that in appointing the Commission the Governor is not going to act in his discretion. There is no discretion left in the Governor. That being so, it is quite obvious that in consulting the Commission, and defining its terms of reference, the Governor would be guided by the advice of the local ministers, and I do not think, therefore, there need be any fears such as the one that he has expressed.

Now, with regard to the amendment of my Friend, Mr. Brajeshwar Prasad, this is the one amendment I think in which so far as I am concerned, I feel that he has urged some serious argument. He says that the whole of the tribal area should be lifted from the Province of Assam and should be made a Centrally administered area, because there cannot be any other effect of the amendment which he has put forward except the one which I have suggested. It means practically constituting the area as a Centrally administered area. But he seems to have forgotten two things. The first is this. Although we have constituted autonomous districts for the purpose of the satisfaction of the tribal people living in those areas that they will have, at any rate for the first ten years, autonomy in the matter of the government of their areas, we have now here provided that the autonomous districts shall not constitute part of the province of Assam. That being so, it is very difficult to leave part of the province to be governed by the Governor of the province and part of the province to be administered as a Centrally administered area.

The second point he has forgotten is this. He has forgotten to take note : of the fact that even in constituting the autonomous areas, the Drafting Committee has not forgotten that there are what are called certain "frontier areas", bordering on the autonomous districts. It has been provided in this Schedule that so far as the administration of these frontier areas of Assam is concerned, the Governor would be acting under the President. Consequently whatever strategic importance, the frontier areas may have, the Centre would certainly have ample jurisdiction to see that none of the disturbing factors to which he has made reference will find any place there. I therefore, think that all these amendments are unnecessary and out of place.

Shri Kuladhar Chaliha : Is amendment No. 139 accepted?

The Honourable Dr. B. R. Ambedkar : I cannot say off-hand now. I am only dealing with your amendment and the amendment of Mr. Brajeshwar Prasad, and I think they are unnecessary.

Mr. President : And amendment No. 139 has not been moved at all. It deals with paragraph 14.

The Honourable Dr. B. R. Ambedkar : We shall deal with it when we reach paragraph 14.

[Amendment of Dr. Ambedkar as mentioned above was adopted. Others were rejected. Paragraph 1, as amended, was added to the Sixth Schedule.]

SIXTH SCHEDULE—*(contd.)*

(Paragraph 2)

***The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Sir, I beg to move :

"That in sub-paragraph *(1)* of paragraph 2, for the words 'not less than twenty and not more than forty members' the words 'not more than twenty-four members' be substituted."

This amendment is introduced because it was felt that the original number forty might be too large.

Sir, I move:

"That sub-paragraph *(2)* of paragraph 2 be deleted."

The reason why the deletion is made is because we propose to leave the delimitation of constituencies to rules rather than provide it in the Constitution itself.

Sir, I move:

"That after clause *(d)* of sub-paragraph *(7)* of paragraph 2, the following clause be added :—

'*(dd)* the term of office of members of such Councils.' "

This was omitted from the rule-making powers.

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†The Honourable Dr. B. R. Ambedkar : If you like, Sir, I would make a few observations at this stage and then probably many people may not find it necessary to speak and all these doubts, I think, would have been dispelled.

Prof. Shibban Lal Saksena : I only wanted to say that if this scheme of things is going to be put in a permanent Constitution that will mean that some areas of Assam shall remain beyond the control of Parliament for ever....

*CAD, Vol. IX, 6th September 1949, p. 1007.

†*Ibid.,* p. 1013.

Mr. President : Power is given to the Parliament under the paragraph 20 to repeal the whole of the Schedule, if it thinks necessary. What more do you want?

Prof. Shibban Lal Saksena : Sir, I have referred to this fact in my speech.

Mr. President: Does Dr. Ambedkar like to say anything at this stage?

The Honourable Dr. B. R. Ambedkar : If you like, Sir, now that honourable Members want to speak, let them speak.

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***Mr. President:** I will call upon Dr. Ambedkar to reply. I think, we had better finish this now. We have had enough discussion.

The Honourable Dr. B. R. Ambedkar : We have debated this question for two hours and I think the debate was mostly on points that are really not concerned with the Schedule. It is time that we attended to the Schedule itself, unless any particular Member has something very new to say, we need not continue the debate.

Mr. President : I have already called upon you to reply.

The Honourable Dr. B. R. Ambedkar : I am very much obliged to you. Sir, we have two amendments before us and I propose to deal with them before I reply to the general debate.

The first amendment is No. 100 moved by Mr. Chaliha. With regard to this, I do not see how it is appropriate in sub-paragraph *(5)* of paragraph 2. Sub-paragraph *(5)* merely deals with the jurisdiction of the Regional and District Councils. It has nothing to do with any directions that may be given by the Governor or the legislature of the State. We are simply creating a District Council and a Regional Council. If the honourable Member wanted to move any such amendment he ought to do to the appropriate provision. This Schedule deals with the subject matter with which the District Council and the Regional Council will be concerned. So I fail to understand altogether the appropriateness of the amendment at this particular place.

With regard to amendment No. 257 whereby the honourable Member seeks to limit the number on the Council to fifteen, it seems to me, again, quite unnecessary, because my own amendment says, 'not more than twenty-four'. Twenty-four is the maximum. Consequently, if it was necessary to have a Council of less than fifteen, even then my

*CAD, Vol. IX, 6th September 1949, pp. 1024-1028.

†*Ibid.*

amendment should suffice. I therefore say that amendment number 257 is quite unnecessary.

Now, having disposed of these amendments, I will turn to the general debate on the question whether there should be Regional and District Councils for the purpose of the tribals living in Assam. Sir, in dealing with this matter, I am sorry to say, many Members who took part in the debate did not properly study the provisions contained in this Sixth Schedule. I am sure about it that if they had properly studied the provisions of this schedule they would not have raised the point which they raised that by creating these Regional and District Councils we were creating a kind of segregated population. It does nothing of the kind.

Now, the position of the tribals in Assam stands on a somewhat different footing from the position of the tribals in other parts of India.

Shri A. V. Thakkar : Hill tribals please.

The Honourable Dr. B. R. Ambedkar : I am not concerned with the terminology. I am speaking of Assam and other areas for the moment. The difference seems to be this. The tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilisation and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the red Indians in the United States as against the white emigrants there. Now, what did the United States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations or Boundaries within which the Red indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so

to say, within the range of the laws made by the white people for white persons and for the purpose of the white civilization.

I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. But my point is that those who have based their criticism of this Schedule on this fact, namely that we are creating Regional and District Councils, have altogether failed to understand the binding factors which we have introduced in this Constitution. I should therefore like to refer to some of the provisions which nullify this segregation, so to say.

The first thing that we have done is this: That we have provided that the executive authority of the Government of Assam shall extend not merely to non-tribal areas in Assam, but also to the tribal areas, that is to say, the executive authority of the Assam Government will be exercised even in those areas which are covered by the autonomous districts. This, as will be seen, is a great improvement over the provisions contained in the Government of India Act, 1935. In the provisions contained in that Act, the executive was divided into two categories, one was called the Government of the province and the other executive was called the Governor in his discretion, so far as the tribal areas were concerned. This applied not only to the tribal areas in Assam, but also to completely excluded areas in other areas. The executive authority which operated upon those areas was not the executive of the province, but the Governor in his discretion. We have abolished that distinction so that the whole of the tribal area including those in the autonomous districts is now under the authority of the provincial Government. The thing which is a binding thing, to which honourable Members have paid no attention is this. That, barring such functions as law-making in certain specified fields such as money-lending, land and so on, and barring certain judicial functions which are to be exercised in the village panchayats or the Regional Councils or the District Councils, the authority of Parliament as well as the authority of the Assam Legislature extends over the Regional Councils and the District Councils. They are not immune from the authority of Parliament in the matter of lawmaking, nor are they immune—and that is the aim of the new amendment—from the jurisdiction of the High Court or the Supreme Court. This, I submit, is one binding influence.

The other binding influence is this : that the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply

to these Regional Councils and to the District Councils unless the Governor thinks that they ought not to apply. In other words, the burden is thrown upon the Governor to show why the law which is made by the Legislature of Assam or by the Parliament should not apply. Generally, the laws made by the local Legislature and the laws made by Parliament will also be applicable to these areas. I say that this is another unifying influence. Yet another unifying influence to which I must make reference is this. We are not saying that the political authority or power we have given to the tribal people through the constitution of the Regional Councils or the district Councils is all the sphere of influence to which they will be entitled. On the other hand, we have provided that the tribal people who will have Regional Councils and District Councils will have enough representation in the Legislature of Assam itself, as well as in Parliament, so that they will play their part in making laws for Assam and also in making laws for the whole of India. Now, if these cycles of participation, if I may say so, to which I have referred, *viz.,* representation in the legislature of Assam and representation in Parliament, the application of the laws made by Parliament and the application of the laws made by the Assam legislature are not binding forces, I would like to know what greater binding forces we can provide for the purpose of unifying the Regional Councils and the district Councils with the political life of the province as a whole.

I do not therefore agree that in creating the Regional Councils and the district Councils, we have cut up the population of Assam into two water-tight compartments, *viz.,* tribals and non-tribals. On the other hand, we have provided, as I have stated, many cycles of participation in which both can politically come together, influence each other, associate themselves with each other, and learn something from one another. I am sure about it that the argument which has been urged against the provision of Regional Councils and District Councils is entirely based upon a misunderstanding and inadequate reading of the other provisions contained in this Schedule.

Sir, I was rather surprised at the attitude taken by my Friend, Mr. Chaliha, in moving his amendment, also at the attitude of my Friend, Mr. Rohini Kumar Chaudhari. I feel that they are not now a happy and united family. What is the cause of it I do not understand, but I can say that, when these amendments were made, they were made with the consent of Mr. Chaliha, they were made with the consent of the Premier of Assam, and also with the consent of my friend, Mr. Nichols Roy, who is a principal

party concerned in this. I see they are now indulging in criticising each other because of factors which lie outside this Schedule. I cannot find any other reason for this dissension, for this open dissension and hostility which has been exhibited by one against the other, and I do not wish therefore to enter into what I regard is a purely domestic quarrel.

Shri Rohini Kumar Chaudhari : Is the Honourable Dr. Ambedkar entitled to make the insinuations against us?

The Honourable Dr. B. R. Ambedkar : I am not making any insinuations; I was only saying, Sir, that it was a domestic quarrel into which I would not enter. My own view is that we have made the best provision...*

Shri Kuladhar Chaliha : I object to Dr. Ambedkar imputing motives for honest opinion expressed.

The Honourable Dr. B. R. Ambedkar : I am not imputing any motives. Mr. Chaliha was a party to every change that has been made in this Schedule. I would like him to deny that fact. Can he deny it?

Shri Kuladhar Chaliha : Yes, I deny. I told Mr. Bardoloi that I did not agree with some things.

The Honourable Dr. B. R. Ambedkar : He might have whispered in the ears of Mr. Bardoloi. He did not say a single word against these changes in the Drafting Committee. I did not get his signature as I did in certain other cases, because I do not want any Member to go back upon his word. However, what I was saying was that the Regional Councils and the District Councils have been given certain autonomy for certain purposes and at the same time they have been bound together in the life of the province and in the life of the country as a whole. If these circumstances which are of a unifying character, do not bind, do not bring the tribal people with the rest of the plains people in Assam and in the country, then the cause for such an unfortunate event must be found in something else. My friend, Mr. Rohini Kumar Chaudhari, stated that if you create the Regional Councils, the tribal areas will go the way of Tibet and go the way of some other area. I do not know that that prophecy could be confined only to the tribal areas. I fear that Assam itself might go. For that we cannot make any provision in the Constitution. I am sure about it.

Shri B. Das (Orissa : General) **:** May I ask Dr. Ambedkar if he is aware that British agents are still working on the Assam—Burma border and that they have been responsible for the troubles between the Karens and the Burmans, and whether those same British agents are not still working in the tribal areas of Assam? After hearing the speech of my Friend, Rev.

*Dots indicate interruption.

Nichols Roy, I think that he wants the tribal areas to be a separate entity so that British influence could permeate these tribals areas. As a Member of the Government, Dr. Ambedkar knows well—and I have known something—about these tribal areas.

The Honourable Dr. B. R. Ambedkar : All I can say is that it is perfectly possible to devise some means by which we can eliminate this foreign influence altogether.

Shri B. Das: The Drafting Committee...

The Honourable Dr. B. R. Ambedkar : The Drafting Committee has nothing to do with eliminating this foreign influence. It is the function of some other body but I can assure my friend that it would not be difficult to get rid of this foreign influence.

[Paragraph 2, as amended was added to the Schedule.]

(Paragraph 3)

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***Shri Kuladhar Chaliha :** ...In fact this amendment is the same as mine and therefore Dr. Ambedkar should have accepted mine than by adding like this and watering down and making a fuss of making laws. It is better to accept by amendment No. 113 than the amendment of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : The honourable Member has already moved it for me. If you will take it as if moved by me, it will save time.

Mr. President : I take it that he has moved.

The Honourable Dr. B. R. Ambedkar : Shall I move it formally?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after sub-paragraph *(2)* of paragraph 3, the following sub-paragraph be added :—

'*(3)* All laws made under this paragraph shall be submitted forthwith to the Governor and until assented to by him shall have no effect.' "

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I beg to move:

"That in amendment No. 114 of List I (Seventh Week), for the proposed sub-paragraph *(3)* of paragraph 3, the following be substituted :—

'(3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the Legislature and assented to by the Governor such laws shall have no effect'."

The amendment was negatived

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*CAD, Vol. IX, 6th September 1949, p. 1029.

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***Mr. President:** Dr. Ambedkar, do you wish to say anything? I do not think there is anything in this to discuss.

The honourable Dr. B. R. Ambedkar : Sir, with regard to my Friend Mr. Chaliha's amendment No. 113, I really do not understand what it means. It says: "The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State legislature may approve." I cannot understand what it means. I am therefore unable to say that I accept it.

With regard to my amendment and the amendment moved by my honourable Friend Mr. Rohini Kumar Chaudhari, there is hardly any difference except a failure to understand on the part of my honourable Friend as to what the word 'Governor' means. He says that the laws shall be approved by the legislature of Assams. According to my amendment, the laws will be approved by the Governor as advised by the Ministry of Assam, because in all this scheme we are dropping the words 'in his discretion'. Wherever the word Governor occurs, it means Governor acting on the advice of the Ministry. I should like to ask him whether he really thinks there is very serious difference between a law being approved by the Governor acting on the advice of the Ministry and a law being approved by the legislature of Assam itself. I think my scheme is much more consistent with the originals of the scheme, namely, that the tribal people themselves should have a certain inherent right given by the constitution to make laws in certain respects. That being so, my paragraph *(3)* is much more consistent with the scheme and gives the Assam Ministry some power to advice the Governor as to whether he should accept or not accept any law. The intervention of the legislature is quite unnecessary.

Shri Rohini Kumar Chaudhari : If I have understood the Honourable Dr. Ambedkar aright, I would be prepared to withdraw my amendment. I mean, if the Governor is to be advised by the Ministry and the Ministry takes the opinion of the legislature, then, I have no objection. If the advice of the Ministry means that the Ministry will take no such action until the house has had an opportunity of discussing it, then, I think it is the same thing which I want and which Dr. Ambedkar wants. In that case, I shall withdraw.

The Honourable dr. B. R. Ambedkar : I think he is under standing more than what I have said. I am not prepared to give him that assurance at all.

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*CAD, Vol. IX, 6th September 1949, p. 1031.

[Amendment was negatived. Paragraph 3, as amended, was added to the Schedule.]

(*Paragraph 4*)

***The Honourable Dr. B. R. Ambedkar:** Sir, I move :

"That in sub-paragraph (1) of paragraph 4, the words and figures 'or those arising out of any law made under paragraph 3 of this Schedule' be deleted.' "

They are unnecessary.

Sir, I also move:

"That in sub-paragraph *(2)* of paragraph 4, for the words 'shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final' the words 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases' be substituted.' "

Sir, I also move:

"That after sub-paragraph *(2)* of paragraph 4 the following sub-paragraph be added :—

(3) the High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph *(2)* of this paragraph apply, as the Governor may from time to time by order specify'."

This amendment makes an important change. Originally under sub-paragraph *(2)* of Paragraph 4 the decision of the District Court was final. Now we have provided that they shall be subject to appellate jurisdiction of the High Court and the Supreme Court which was a necessary provision.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I must say that I was somewhat surprised by my honourable Friend's putting me these questions. I think he could have answered them himself. But I will now answer them as he has put them to me.

With regard to the first question of whether lawyers will be allowed to appear in courts established in the tribal area, the answer is very simple. In the first place, the Provincial Government will have the power, under the entry in List III dealing with professions, to make any law with regard to the legal profession; and if under that law they provide that lawyers shall be entitled to appear in the courts in the districts which are known as autonomous districts, then that law will apply unless the governor thinks that that law should not apply. Therefore, that matter is quite clear.

With regard to the question of appeals from the decisions of the tribunals which are created under this paragraph, the answer again is quite simple. The paragraph first provides that a court of appeal may be

*CAD, Vol. IX, 6th September 1949, p. 1033.

†*Ibid*., pp. 1035-1036.

constituted there. Now the Governor or the Provincial Ministry may either constitute a new court of appeal in which case appeals will go to that court, or may declare the District Judge's Court as a court of appeal which will hear appeals from decisions made by the village panchayats and other courts. Therefore, there again there is a provision for appeal. According to my amendment now, there may be a further appeal from the District Court of appeal either to the High Court or to the Supreme Court.

Shri Rohini Kumar Chaudhari : I particularly read out these lines of sub-paragraph *(2)*:—

> "...the Regional council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes..."

What would happen when one of the parties is not a member of a scheduled tribe?

The Honourable Dr. B. R. Ambedkar : If the parties are such that one is a tribal and the other a non-tribal, then the ordinary law will apply.

Shri Rohini Kumar Chaudhari : Where have you provided it?

The Honourable Dr. B. R. Ambedkar : It follows from it. Even now it says, "where the parties are..."*. I do not think there is any difficulty and I hope my friend has understood it.

Shri Rohini Kumar Chaudhari : There is no provision made anywhere, Sir.

The Honourable Dr. B. R. Ambedkar : The jurisdiction of the ordinary court is ousted only to the extent provided for in paragraph 4. Otherwise the jurisdiction of the ordinary courts continues. These will not be the only courts in this area; there will be other courts established by the Provincial Government for the purpose of administration of the general law of the Province.

[Paragraph 4, as amended, was added to the Schedule.]

(Paragraph 9)

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move:

> "That sub-paragraph *(1)* of paragraph 9 be deleted."

The paragraph refers to licence or lease granted by the Government of Assam for the prospecting for or the extraction of minerals. That matter now is with the Central Government and therefore it is unnecessary to have this sub-paragraph here.

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*Dots indicate interruption.

†CAD, Vol. IX, 6th September 1949, p. 1039.

(Paragraph 10)

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That in sub-paragraph *(2)* of paragraph 10, for the words 'Such regulations may' the words 'In particular and without prejudice to the generality of the foregoing power, such regulations may' be substituted."

It is merely a drafting change.

I also move:

"That after sub-paragraph *(2)* of paragraph 10, the following sub-paragraph be added :—

'*(3)* All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect'."

(The amendment was adopted)

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†**The Honourable Dr. B. R. Ambedkar :** May I say a word or two with regard to matters about which my friend is terribly excited? There are three things provided by way of safeguards which my friend has not taken into consideration. The first provision to paragraph 10 says: "Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:" This is one safeguard. The second safeguard is contained on page 184 of the Draft Constitution. It says: 'Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations." Therefore, existing rights are not affected.

The third thing to which my friend has not cared to pay any attention is the amendment I have moved, viz., "All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

These precautions are there.

As regards his remarks that what the Drafting Committee has done is a barbaric thing, not done even by the British Government. I may point out that he forgets the fact that this excluded area was entirely within the discretion of the Governor; it was his fault. We have altogether taken away that discretion of the Governor. He can now act only subject to the advice of the Ministry.

*CAD, Vol. IX, 6th September 1949, p. 1041.

†*Ibid.,* pp. 1041-1042.

I wonder now whether my Friend Shri Rohini Kumar Chaudhari is satisfied with the explanation, I have given ?

Honourable Members : Not at all.

The Honourable Dr. B. R. Ambedkar : I know you want something more than what I can give. You are like hungry David Coperfield asking for more gruel.

[Paragraph 10, as amended by Dr. Ambedkar's above mentioned amendment, was added to the Schedule.]

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(Paragraph 12)

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***The Honourable Dr. B. R. Ambedkar :** May I draw attention to my amendment No. 128 on the Order Paper? As that is going to be moved, this amendment of my friend will be quite unnecessary. Therein I am proposing the omission of the words objected to by him.

Shri Kuladhar Chaliha : I am glad that for once some kind of sense has dawned upon the Drafting Committee. It is fortunate that for the first time sense has dawned on the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : That is because for the first time you have convinced me by your arguments.

Sir, I will now move my amendment No. 128 :

"That in clause *(b)* of paragraph 12, for the words 'with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be' the words 'specify in the notification' be substituted."

The Governor, by this amendment, is freed from the trammels of any resolution that may be passed by the District Council or the Regional Council. He can now act on the advice of the Ministry whether a particular law passed by Parliament or by the Legislature of Assam is to apply to that area or not.

[Amendment was adopted. Paragraph 12, as amended, was added to the Schedule.]

(Paragraph 13)

†Mr. President: Amendment No. 129.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in paragraph 13, after the words 'the State of Assam shall' the words 'be first placed before the District Council for discussion and then after such discussion' be inserted."

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*CAD, Vol. IX, 6th September 1949, p. 1043.

†*Ibid.,* p. 1044.

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Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I move ?

"That is amendment No. 129 above, in paragraph 13, after the words 'and then after such discussion' (proposed to be inserted) the words 'and such separate statement pertaining to autonomous districts shall be subject to such modifications and alterations as the State Legislature may make' be inserted."

Mr. President : Would you like to say anything, Dr. Ambedkar, about Mr. Rohini Kumar Chaudhuri's amendment?

The Honourable Dr. B. R. Ambedkar : I must complain that, although the words "Section 177" occur in the original draft, my Friend Mr. Rohini Kumar Chaudhuri has thought it fit to bring in this amendment No. 130. The effect of regarding it as a financial statement within the meaning of 177 means that it will be discussed by the Assam Legislature and, voted upon. Amendments may be moved and the appropriation law would apply. The only thing is that before the Assam Legislature deals with it, it is desirable to allow the District Councils to have their say as to how the money should be allocated. I hope he is now content.

(Paragraph 13, as amended, was added to the Schedule)

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(Paragraph 14)

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***The Honourable Dr. B. R. Ambedkar :** Sir, I do not think that this amendment is necessary. So far as ...

Mr. President : You have yourself certain amendments to move first.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I will move them first. Sir, I move:

"That in sub-paragraph *(1)* of paragraph 14, after the words 'autonomous districts in the State' the words, brackets, letters and figures 'including matters specified in clauses *(b), (c), (d)* and *(e)* of sub-paragraph *(3)* of paragraph 1 of this Schedule' be inserted."

"That in sub-paragraph *(1)* of paragraph 14, after the words 'autonomous districts' in the two places where they occur, the words 'and autonomous regions' be inserted."

"That in clause *(a)* and *(b)* of sub-paragraph *(1)* of paragraph 14, after the words 'districts' in the two places where it occurs, the words 'and regions' be inserted."

"That in sub-paragraph *(3)* of paragraph 14, after the words 'autonomous districts' the words 'and autonomous regions' be inserted."

Some of these amendments are consequential. Others are purely verbal.

Shri Kuladhar Chaliha : Mr. President, Sir, I move :

"That with reference to amendment Nos. 3500 and 3501 of the List of Amendments (Vol. II), after clause *(c)* of sub-paragraph (1) of paragraph 14, the following new clause be added :—

*CAD, Vol. IX, 6th September 1949, pp. 1046-1048.

'*(d)* inclusion or exclusion of any tribal area from any district or Regional Council.' "

...I trust the Drafting Committee will reciprocate the kindness after all the unkindness they have shown and that they will accept this and include my amendment in *(d),* it will greatly improve the clause.

The Honourable Dr. B. R. Ambedkar : I should like to draw my honourable Friend's attention to the amendment which I moved to paragraph 1 of this schedule, in which the provisions of sub-paragraph *(3)* were altered in certain respects. This matter which he now wants to provide is to be regulated on the recommendation of the Commission. That paragraph has already been passed, and therefore, it is not necessary.

Shri Kuladhar Chaliha : Is it amendment No. 99 ?

The Honourable Dr. B. R. Ambedkar : Yes, it is 99.

Shri Kuladhar Chaliha : But yet you have limited the commission here in paragraph 14 to *(a), (b)* and *(c).* That is my difficulty.

The Honourable Dr. B. R. Ambedkar : That is what had been passed.

Shri Kuladhar Chaliha : It has already been passed, but all the same you have limited it in *(a), (b)* and *(c).*

The Honourable Dr. B. R. Ambedkar : If I may explain to my honourable Friend, the operation of sub-paragraph *(3)* which deals with the alterations in the tribal areas either by inclusion or exclusion, are divided into two categories. The first is this : Inclusion in any part of the said table which is *(a).* That the Governor can do, as the very start. For that no recommendation of Commission is necessary. But according to my amendment if action is to be taken under *(b), (c), (d)* and *(e),* then the Commission's recommendation is necessary and as I said that part has been passed by the House. It is not possible to re-open this now.

Shri Kuladhar Chalihar : You have limited it again with the consideration of the report of the Commission appointed under sub-paragraph *(1)* of paragraph 14 of this Schedule. You have provided amendment No. 99 but limited it again. I should like to hear what Dr. Ambedkar has to say about it.

The Honourable Dr. B. R. Ambedkar : It is not limited by paragraph 14.

Shri T.T. Krishnamachari : If the honourable Member will please look at amendment No. 134, which wants the inclusion of the words "including matters specified in clauses *(b), (c), (d)* and *(e)* of sub-paragraph *(3)* of paragraph 1 of this Schedule" after the words "autono-

mous districts in States" in sub-paragraph *(1)* of paragraph 14 then he will find the object that he has in mind has already been served by this amendment.

Shri Kuladhar Chaliha : Thank you, Sir.

Pandit Hirday Nath Kunzru (United Provinces : General): I have some difficulty in understanding this. The amendment moved by Mr. Chaliha is to the effect that the Commission that may be appointed by the Governor should consider not merely the inclusion of any new tribal area but also its exclusion. An area may be excluded from an existing tribal area without its being included in another tribal area and that thing has not been provided for here. All that the amendment No. 99 of Dr. Ambedkar provides is that an area may be taken out of one tribal area and united to another area but there is no power given to the Commission to inquire and to report about the desirability of excluding an area altogether. Only Parliament will have the power to exclude an area, from a tribal area, but without having the considered recommendations of the Commission before it because this Commission will not be empowered to deal with the matter.

The Honourable Dr. B. R. Ambedkar : If I may deal with my honourable Friend, Pandit Kunzru's difficulty, I think my honourable Friend has not clearly understood the purpose of Mr. Chaliha's amendment. Mr. Chaliha's amendment is "inclusion or exclusion of any tribal area from any District or Regional Council," that is to say, the diminution of the jurisdiction of the District or Regional Council. That is what Mr. Chaliha is speaking of. What my honourable Friend is speaking of is with the taking away altogether from an autonomous district any area and include it in the general territory of Assam. These are two quite different matters.

Pandit Hirday Nath Kunzru : Why should not the Commission be asked to report on that matter?

The Honourable Dr. B. R. Ambedkar: The Commission has got power to report. If my honourable Friend will read the provision, he will find the following : "The Government of Assam may at any time appoint a Commission to examine and report 'on any matter'. "Any matter" may include also the provisions contained in paragraph 1 and they are also specifically mentioned "specified by him relating to the administration of the autonomous districts in the State or may appoint a Commission to inquire into and report from time to time on the administration of Autonomous districts" includes matters specified, that is "any matters".

My amendment No. 134 I have moved in order to make it quite clear and not to lead to interpretation of the words "any matter". I have now specifically mentioned that these may "include matters specified in clauses *(b), (c), (d)* and *(e)* of sub-paragraph *(3)* of paragraph 1 of this Schedule," and these will be referred to the Commission. That is the purport of my amendment No. 134.

Pandit Hirday Nath Kunzru : I understand the purport of the amendment all right and I am well aware of the contents of clauses *(b), (c), (d)* and *(e)* of the paragraph but what I say is that the Commission that will be appointed to deal with any matter connected with the administration of the autonomous regions does not seem to me to have the power of reporting that an area already included in a tribal area may be excluded from it and amalgamated with an ordinary administered area.

The Honourable Dr. B. R. Ambedkar : My honourable Friend ought to refer to *(d)* of paragraph *(3)* of the said table.

Pandit Hirday Nath Kunzru : That has been removed by your own amendment.

The Honourable Dr. B. R. Ambedkar : That I think will have to be done by Parliament by law.

Pandit Hirday Nath Kunzru : Without having the considered recommendations of the Commission. Parliament should have before it the report of the Commission but now it will have to deal with the matter entirely on the strength of such knowledge as it may have.

The Honourable Dr. B. R. Ambedkar : This is a matter which is not within the competence of the Governor. As passed, the exclusion of any area from the tribal areas is a matter which is taken out of the purview of the Governor. It is left to Parliament to decide. This Commission is merely to guide the Governor to deal with matters which are mentioned in clauses *(b), (c), (d)* and *(e)* of sub-para. *(3)*. Any matter which is outside it is a matter for Parliament. Parliament may appoint a Commission independently of this Commission and then legislate.

Prof. Shibban Lal Saksena : There is no provision for it.

The Honourable Dr. B. R. Ambedkar : No provision is necessary. Parliament may act upon the advice of the Assam Ministry. If Parliament thinks that that advice is not independent and that there should be independent evidence, Parliament is free to appoint a Commission and make an enquiry of its own.

* * * * *

***Shri Rohini Kumar Chaudhuri : ...**If the option of the members from the province of Assam counts for anything in regard to the discussion on this Sixth Schedule which relates primarily to Assam, I think the Honourable Dr. Ambedkar would agree to accept any amendment. I think we are fairly unanimous—I do not know about the two Ministers, but the rest of us are unanimous—on the need for accepting this amendment.

Prof. Shibban Lal Saksena : The Governor is free to appoint anybody to the Commission.

The Honourable Dr. B. R. Ambedkar : There are no limitations at all on the Governor.

Shri Rohini Kumar Chaudhuri : I say two members should be elected by the legislature.

The Honourable Dr. B. R. Ambedkar : He is not prevented from doing so.

Shri Rohini Kumar Chaudhuri : There is no harm in saying that. A man may live or die. Why do you say, die? I want to say live. Please accept my amendment.

The Honourable Dr. B. R. Ambedkar : The Governor will proceed to appoint a Commission on the advice of the Ministry. You think your Ministry will not appoint two members from the legislature.

Shri Rohini Kumar Chaudhuri : I want them to be elected by legislature. I attach certain importance to election by the Assembly. I think the Honourable Dr. Ambedkar also used to give such importance; but he may change his mind now.

Mr. President : There are certain other amendments proposed by Mr. Brajeshwar Prasad : 207,—"President" for "Governor" ; 208,— "President" for "Governor"; 209,—"Parliament" for "State legislature"; 210,— "Union" for "Assam"; 211,—"Union" for "State"; 212,—"President" for "Governor"; 213,—"in the State of Assam" for "in the State".

Shri Brajeshwar Prasad : I do not want to move these.

Mr. President : All the amendments to this paragraph have been moved. Would you like to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No.

*CAD, Vol. IX, 6th September 1949, p. 1049.

Mr. President : I would put the amendments now.

[Following amendments were accepted.]

1. "That for amendment Nos. 3500, 3501, and 3502 of the List of Amendments (Vol. II), the following be substituted :—

   "That for paragraph 14 of the Sixth Schedule, the following be substituted :—

   "The Governor of Assam as the agent of the President may at any time appoint a Commission consisting of not less than seven members, of whom not less than three shall be members of the scheduled tribes and the rest shall be chosen from the ranks of eminent anthropologists, retired judges of the Supreme Court and of the High Courts and men of science and letters, to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, or may appoint a similar commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

   (a) the provision of educational, cultural, medical economic and religious facilities and communications in such districts and regions;

   (b) the need for any new or special legislation in respect of such districts and regions;

   (c) the administration of the laws, regulations and rules made by the District and Regional Councils, and define the procedure to be followed by such Commission.'"

2. "That in sub-paragraph *(1)* of paragraph 14 after the words 'autonomous districts' in the State the words, brackets, letters and figures 'including matters specified in clauses *(b), (c), (d)* and *(e)* of sub-paragraph *(3)* off paragraph 1 of this schedule' be inserted."

3. "That in sub-paragraph *(1)* of paragraph 14 after the words 'autonomous districts', in the two places where they occur, the words 'and autonomous regions' be inserted."

4. "That in clause *(a)* and *(b)* of sub-paragraph *(1)* of paragraph 14, after the word 'districts 'in the two places where it occurts, the words 'and regions' be inserted."

5. "That in sub-paragraph *(3)* of paragraph 14, after the words 'autonomous districts' the words 'and autonomous regions' be inserted."

The amendment was adopted.

[Paragraph 14, as amended, was added to the Schedule.]

(Paragraph 15)

(Amendment No. 140 was not moved.)

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That sub-paragraph *(3)* of paragraph 15 be omitted."

That is because it gives discretion to the Governor which it is not proposed now to leave with him.

*CAD, Vol. IX, 6th September 1949, p. 1051.

Mr. President : Amendment No. 142 : we have dealt with the question of discretion so many times. Is it necessary to move it?

Shri Brajeshwar Prasad : As you direct me, Sir.

Mr. President : I do not think it is necessary. Amendment 214 : again "President" for "Governor"; Amendment 215: "Parliament" for "legislature of the State"; Amendment 216: that is the same as Dr. Ambedkar's. These are all the amendments. Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : No. As I have said we are taking away the discretion from the Governor which we had originally laid with him and it is therefore necessary to delete this sub-para *(3)*.

(The amendment of Dr. Ambedkar was adopted.)

[Paragraph 15, as amended, was added to the Schedule.]

Shri Brajeshwar Prasad : Sir, I would suggest that we sit for a few minutes more and finish this schedule.

Mr. President : It will take time. We may not be able to finish. I was just going to remind the House that we are very much behind our scheduled time and something will have to be done to catch up the lost time.

Shri R. K. Sidhva (C. P. & Berar: General)**:** Today we have no other words and we may sit in the afternoon.

The Honourable Dr. B. R. Ambedkar : Tomorrow if you like we can sit. Today we have called a meeting of the Drafting Committee to take up some articles which have remained for consideration.

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(Paragraph 16)

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***Mr. President:** There are two other amendments which I rule out, because they are on the same lines as the other amendment of Shri Brajeshwar Prasad. Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar : (Bombay: General): I should like to hear the Premier of Assam, if he has any views on this matter.

The Honourable Shri Gopinath Bardoloi (Assam : General)**:** Sir, with reference to the amendment moved by Srijut Chaliha just now for the deletion of the second proviso to paragraph 16, all that I have to say is that in every case where action of this kind is taken—the parties

*****CAD, Vol. IX, 7th September 1949, p. 1054.

affected thereby are given an opportunity of being heard I agree that in this proviso no machinery by which this could be done has been laid down. Therefore, if Srijut Chaliha would modify his amendment as follows, namely, that instead of the words "opportunity of being heard by the legislature" the words "an opportunity of placing the views of the Regional Council" may be substituted, then the purpose of his amendment would be served.

Shri Kuladhar Chaliha : I am prepared to do that.

The Honourable Dr. B. R. Ambedkar : I am prepared to accept the amendment of Mr. Bardoloi to the amendment of Mr. Chaliha, which he has accepted, the proviso will now read like this :

"Provided further that no action shall be taken under clause *(b)* of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State."

Mr. President : The question is :

"That for the second proviso to paragraph 16 of the Sixth Schedule, the following be substituted :

'Provided further that no action shall be taken under clause *(b)* of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State.' "

The amendment was adopted

[Paragraph 16, as amended, was added to the Sixth Schedule.]

(*New Paragraph 16-A*)

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That after paragraph 16, the following paragraph be inserted:—

'16A. *Exclusion of areas from autonomous districts in forming constituencies in such districts.*—For the purpose of elections to the Legislative Assembly of Assam the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such districts but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order'."

The object of this is to give the people who are included in the autonomous districts but really who are not part and parcel of the people inhabiting the autonomous districts an opportunity to have a place in the Legislative Assembly by having their own constituencies marked out for them.

(Paragraph 16-A was added to the Sixth Schedule.)

* * * * *

(Paragraph 17)

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after sub-paragraph *(2)* of paragraph 17 the following sub-paragraph be added :—

*CAD, Vol. IX, 7th September 1949, p. 1055.

'*(3)* In the discharge of his functions under sub-paragraph *(2)* of this paragraph as the agent of the President, the Governor shall act in his discretion.'"

* * * * *

***The Honourable Dr. B. R. Ambedkar :** I do not accept it, Sir.

Mr. President : Then I put Dr. Ambedkar's amendment first. The question is:

"That after sub-paragraph *(2)* of paragraph 17, the following sub-paragraph be added :—

"*(3)* In the discharge of his functions under sub-paragraph *(2)* of this paragraph as the agent of the President, the Governor shall act in his discretion."

(The amendment was adopted.)

(Amendment of Brajeshwar Prasad was rejected).

[Paragraph 17, as amended, was added to the Sixth Schedule.]

(Paragraph 18)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in paragraph 18, in line 22, the words 'in his discretion' be deleted."

"That clause *(c)* of paragraph 18 be deleted."

Mr. President: Amendment Nos. 148 and 149 are ruled out. Then we have amendments Nos. 223, 224, 225 and 226 which are more or less on the same lines. Would you like to move No. 226, Mr. Brajeshwar Prasad? The other three I have ruled out.

Shri Brajeshwar Prasad : I do not like to move any of my amendments, Sir.

Mr. President: Then, I put Dr. Ambedkar's amendments No. 146 and 147.

(The amendments were adopted.)

[Paragraph 18, as amended, was added to the Sixth Schedule.]

(Paragraph 19)

†The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendments No. 150 and 151 of List I (Seventh Week) for paragraph 19 and the Table appended to it the following paragraph and Table be substituted :—

"19. *Tribal areas.—(1)* The areas specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem :

*CAD, Vol. IX, 7th September 1949, p. 1056.

†*Ibid.,* pp. 1056-1057.

Provided that for the purposes of clauses *(e)* and *(f)* of sub-paragraph (*1*) of paragraph 3, paragraph 4 and paragraph 5 and sub-paragraph *(2),* clauses *(a), (b)* and *(d)* of sub-paragraph *(3)* and sub-paragraph *(4)* of paragraph 8 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the Table below to any district (other than the United Khasi—Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution:

Provided that the tribal areas specified in Part II of the Table below shall not include any such areas in the Plains as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf.

Table

PART—I

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills District.

PART—II

1. North East Frontier Tract including Balipara Frontier Track, Tirap Frontier Tract Abor Hills District, Misimi Hills District.
2. The Naga Tribal Area.'"

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***Shri Rohinikumar Chaudhari :** ...But I would say that the amendment which he (Dr. Ambedkar) has moved this morning is merely a Camouflage.

The Honourable Dr. B. R. Ambedkar : Camouflage for what?

Shri Rohini Kumar Chaudhuri : Because Dr. Ambedkar seems to indicate by this amendment that he has altered his view in regard to the inclusion of any part of the Shillong Municipality in the autonomous district.

Dr. Honourable Dr. B. R. Ambedkar : I have not altered my view.

Shri Rohini Kumar Chaudhuri : Paragraph *(2)* of the amendment as it stands includes...

Shri T. T. Krishnamachari : May I point out, Sir, that we here are completely disinterested in this matter and there is no need for any comouflage at all.

Mr. President : There is no question of comouflage because the paragraph is perfectly clear that he wants to exclude, the Municipality of Shillong except that part of it which is comprised in the state of Mylliem.

*CAD, Vol. IX, 7th September 1949, pp. 1063-1064.

†*Ibid.,* p. 1064.

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***The Honourable Dr. B. R. Ambedkar :** Sir, I did not think that my amendment No. 331 substituting a new text of paragraph 19 would cause any kind of difficulty such as the one which I now find. I did not, therefore, consider it necessary to spend much time in explaining the provisions contained in paragraph 19. But now that so much debate has taken place of an acrimonious sort I am bound to explain the provisions as contained in the new amended paragraph 19.

Now, the chief part of the controversy has centred round sub-paragraph *(2)* of paragraph 19. I should like to explain what this means. It means that so far as the United Khasi-Jaintia Hills District is concerned which is mentioned as entry 1 in Part I of the Table, that portion of the area comprised within the municipality of Shillong and which forms part of the Khasi State of Mylliem shall be part and parcel of the United Khasi-Jaintia Hills District. It means that the part of the Mylliem State which is included in Shillong will form part of the United Khasi-Jaintia Hills District. It is realised that this part of the Mylliem State is really subject now under the new provisions of paragraph 19 to two separate jurisdictions. It is subject to the jurisdiction of the Municipality of Shillong, because by this provision we are not altering the boundaries of the Shillong municipality. The boundaries of the Shillong municipality, as defined by the Municipal Act passed by the Assam legislature, remains intact. According to that Act this particular part of the Mylliem State is part of the municipality. It is recognised that this double jurisdiction, namely the United Khasi-Jaintia Hills District and the municipality might come in conflict. In order to overcome this conflict, I have added the proviso to sub-clause *(2)*. The effect of the proviso is this that for the purposes mentioned in the proviso the jurisdiction of the District Council of the United Khasi-Jaintia Hills District is ousted and to the extent that the jurisdiction of the municipality is restricted to this purpose mentioned in the proviso the jurisdiction of the District Council will continue over this area. The idea of the proviso is to avoid conflict of jurisdiction. Some people on the other side have said that the Mylliem State area should be completely excluded from the United Khasi-Jaintia Hills District and should be made exclusively part and parcel of the Shillong municipality.

Pandit Hirday Nath Kunzru : As it is now.

*****CAD, Vol. IX, 7th September 1949, pp. 1070-1074.

The Honourable Dr. B. R. Ambedkar : I do not know whether that is so. The point is this, that as some one from that side said—I think my Friend Shri Rohini Kumar Chaudhuri—three-fourths of the municipality is really covered by this area. There is not the slightest doubt about it that so far as marriage laws, inheritance laws and other customs and manners are concerned, the people living in this part of the Mylliem State share the same laws, the same customs, the same marriage laws and ceremonies of the whole district. Consequently what will happen is this. Supposing this area were completely excluded from the United Khasi-Jaintia Hills districts, the result will be that these people although they are fundamentally alike to their brethren in the rest of the part of the Mylliem State with regard to marriage laws, their customs, etc., etc., they will become at once subject to the general law of inheritance, general law of marriage, all general laws which the Parliament may make or which the Assam Legislature may make. I do not think that it is right that a part of the people who are homogenous in certain matters should be severed in this manner. A part will obtain autonomy so far as their tribal life is concerned and a part will be subject to the general law to which the rest of the population is subject. It is for this reason that the Drafting Committee felt that the provision contained in sub-clause *(2)* and the proviso which accompanies it was the proper solution of this problem, namely, that for the purpose of the municipality as defined in the proviso that part of the Mylliem State which is part of the municipality should remain subject to the municipality, while for purposes for which the district council is constituted that part should remain subject to the district council. There is no conflict and it helps to sub-serve the fundamental purpose, namely, that a homogeneous people should be subject to the same sort of laws and to the same sort of administrative system which all of them should have and have.

Now, there may be some controversy as to whether the proviso is sufficiently big enough to cover all matters that ought to be covered or whether it is too narrow. I am not prepared to express any opinion about it. The Drafting Committee has been guided in this matter by the two principal representatives, who must be credited with sufficient knowledge and information about this matter, namely, the Premier of Assam and his colleague, Rev. Nichols-Roy. If they in their wisdom think that some other matters ought to be included, the Drafting Committee will certainly not raise any objection because the Drafting Committee has nothing to do with this matter.

Shri Rohini Kumar Chaudhuri : Is it that the non-tribal people who live in Shillong have no voice in this matter?

The Honourable Dr. B. R. Ambedkar : In what matter?

Shri Rohini Kumar Chaudhuri : In whatever matter you are touching on now.

The Honourable Dr. B. R. Ambedkar : I cannot understand the point. What we have done is that the people living in this part have a double right. They have a right to elect their representatives under the Shillong Municipality and they will have a right to elect their representatives in the District Councils. Beyond that, the jurisdiction is quite separate. I do not think there is any other point so far as this new paragraph 19 is concerned.

Shri Rohini Kumar Chaudhuri : On a point of information, does the Member who is now speaking, mean to say that those people in Dimapur where there is not a single tribal person, and those people in Shillong, are to be guided entirely by the opinion of Rev. Nichols-Roy.

Mr. President : He has not said anything about Dimapur. He is dealing with the question by Mr. Bardoloi that paragraph 10, sub-clause *(d)* of sub-paragraph *(2)* might be included in the proviso.

The Honourable Dr. B. R. Ambedkar : I have no objection. We leave the matter to them. If they think that certain matters should be included, why should we object? We are acting upon their advice.

Pandit Hirday Nath Kunzru : May I ask Dr. Ambedkar for information on the point? Has the Drafting Committee or Mr. Bardoloi and the Rev. J. J. M. Nichols-Roy who signed the report of the Tribal Areas Committee of Assam received any representation asking for a change in regard to the position of the tribal people living within the limits of the Shillong municipality?

The Honourable Dr. B. R. Ambedkar : I have not questioned their credentials nor have I examined whether they have fortified themselves with any such representation.

Pandit Hirday Nath Kunzru : I put this question because my honourable Friend referred to the authority of the Prime Minister of Assam and Rev. Nichols-Roy. Both these gentlemen have signed the report of the Committee to which I have referred and that Committee says that the limits of the Shillong Municipality should be what they are now and does not suggest any change in the status of the people living in that area.

The Honourable Dr. B. R. Ambedkar : That they may have done but the report cannot act as an estoppel for further re-examination! I do not think we can carry the matter any further. As I said the Drafting Committee felt that this was such a local matter that they could not act without the authority or advice of the principal participants in this matter. We took their advice and we carried out the work. If they think...*

Shri Kuladhar Chaliha: In Dimapur people from all over India reside.

Mr. President: There is no use saying anything about Dimapur. He has said nothing about Dimapur.

The Honourable Dr. B. R. Ambedkar : I have so far said nothing about it; I am coming to it.

Now I come to the exclusion of certain areas from the autonomous districts.

In this connection I would like to remind the House of the new article 16-A which has just been passed. I would like you to refer to that. In framing article 16-A, two questions were raised. One question related to some two mouzas of what are called the Garo Hills. Along with that the question of the Dimapur area was also raised by my Friend Mr. Chaliha, and I think I am justified in saying that he was present at the Conference. There were three representatives of Assam who were also present at this Conference. Mr. Bardoloi, Rev. Nichols-Roy and Mr. Chaliha and it was considered whether these mouzas of the Garo Hills and the Dimapur area should be separated from the autonomous district. It was said that the conference that it was not desirable to separate them from the autonomous districts because the life of these mouzas—their economic life—was closely bound up with the life of the people in the autonomous districts. It was therefore said that it would be enough if these areas, that is to say, the three mouzas from the Garo Hills and the Dimapur area were separated purely for giving political representation to the inhabitants of this area in the Legislative Assembly. That was definitely stated by my Friend, Mr. Chaliha, who has now raised the question of the Dimapur area. It was therefore at their request and at the instance of these three representatives of Assam that paragraph 16-A was framed in the terms in which it has been framed. If at that time they agreed that there should be a complete separation, that this should not form part of the autonomous area, we would have had no objection to carrying out their wishes. Therefore, it is no use blaming the Drafting Committee: for doing some-

*Dots indicate interruption.

thing which it was not advised to do. That is my first submission. Paragraph 16-A embodies the concretes conclusions of the Drafting Committee and of the three representatives of Assam, including Mr. Chaliha, who for the first time raised the matter of the Dimapur area

Shri Kuladhar Chalihar : May I submit that I was asked to go there as an Adviser and to see. I never felt that I was a member of the Drafting Committee and you will not find my name there.

Mr. President: No one has suggested that you were a member of the Drafting Committee. He has said that you were present.

The Honourable Dr. B. R. Ambedkar : That is his opinion. There is a further point to be made, namely, under amendment 99 which gives power to the Governor to alter boundaries, to diminish areas and so on. It would be perfectly possible for the Governor to sever any area, exclude any area from the area now to be included in the autonomous area. If that is not clear, the Drafting Committee would be quite prepared to include an express clause to that effect. But I do like to say that it is very unfortunate, to put it in the very mildest terms possible, that representatives should come to a conference, agree to certain agreement, and then resile from that agreement, bring in amendments and make it a point to comment against the Drafting Committee and say that they have done something which is either contrary to the wishes of the representation...*

Shri Kuladhar Chaliha : No.

The Honourable Dr. B. R. Ambedkar : I am very sorry. All I can...*

Shri Kuladhar Chaliha : No, no.

The Honourable Dr. B. R. Ambedkar : I am very sorry. Therefore, so far as paragraph 16-A is concerned, it provides separation for the purpose of political requirements. If complete separation is wanted I submit it is already provided for in the paragraph we have passed. If it does not do that, I am prepared to add a clause to make that thing quite clear that the Governor will have power to exclude any area if he thinks fit. So far as my amendment contained in new paragraph 19 is concerned I believe that all points of controversy have been answered.

Now, Sir, I propose to deal with my honourable Friend Mr. Kunzru's amendment which is for the addition of another paragraph. It will be noticed that his amendment is nothing but a repetition of paragraph 5 of the Fifth Schedule which has already been passed and which deals with tribal areas or scheduled areas in States other than Assam. There is nothing more in his amendment than this. My submission as against his

*Dots indicate interruption as shown in the original.

amendment is this : so far as sub-clause *(1)* of his new paragraph is concerned, it is quite unnecessary. It is governed by paragraph *12(b)* of the Sixth Schedule which gives the Governor the power either to apply or not to apply or if apply, apply with modifications laws made by Parliament or laws made by the Legislature of Assam. Therefore, that provision is absolutely unnecessary, and is already contained in our Draft.

With regard to the second sub-clause *(2),* the position is this. It is quite true that so far as the Fifth Schedule is concerned, we do give the Governor the power to make regulations in respect of that area, but we do not propose to give that power to the Governor in the case of the Sixth Schedule. It is for this reason that in the case of the Fifth Schedule the tribes have no authority to make any regulations for themselves, but in the case of the Sixth Schedule, we have given the district council and the regional council the right to make laws in certain respects. It seems to me, therefore, that where the tribes have not been given the power to make regulations it is necessary to give the power to the Governor to make regulations. But, where the tribal councils themselves have been given power to make regulations it seems to me that conferring powers upon the Governor to make similar regulations is utterly superfluous. That is the reason why we do not propose to give the power to the Governor so far as the Sixth Schedule is concerned. I therefore submit that this amendment is quite unnecessary.

There is one other point which I would like to make quite clear. The power to make regulations which it is proposed to give to the District Council under the Sixth Schedule is not a new power at all. As a matter of fact there exists now in Assam certain regulations which give the tribes the same power of making regulations which we are giving by our Schedule. The Schedule therefore is not anything new it is merely continuing the existing position, namely, that the tribes have the power now to make regulations in certain matters. Therefore, for the reasons I have explained his amendment is quite unnecessary. I therefore oppose it.

Mr. President : I was going to suggest that there is really not as much difference in the view points expressed here as would appear from the discussion that we have had. As I have followed Dr. Ambedkar's statement, I believe that if two suggestion are accepted, probably much of the differences will disappear, I was going to suggest therefore that he should include clause *(d)* of sub-paragraph *(2)* of paragraph 10 in the proviso.

The Honourable Dr. B. R. Ambedkar : If we leave it to the Drafting Committee it will do that.

Mr. President : I was going to suggest that we add to clause *(d)* of sub-paragraph *(3)* in amendment No. 99, after the words "diminish the area of an autonomous district" the words "or exclude any are from an autonomous district." This would cover all the points.

The Honourable Dr. B. R. Ambedkar : That we are quite prepared to do.

Mr. President : I find this difficulty. Most of the Members of the House including myself are not acquainted with the local situation and are therefore not in a position to take any definite line of our own with regard to Assam. We have to be guided by friends from there. Since there is difference in some respects among them, our position becomes very difficult. I would therefore suggest that it would be best to leave the thing to be dealt with by the local Government. The suggestions which I have made will enable the local Government to deal with this matter. I understand that Dr. Ambedkar has no objection to the two suggestions I have made.

The Honourable Dr. B. R. Ambedkar : No, Sir. I am prepared to add 10*(2)(d)* to the proviso and also add, 'power to exclude' in the other case.

Mr. President : I think that will satisfy the Friends from Assam.

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***Mr. President :** The proposal is different under paragraph 19.

The Honourable Rev. J. J. M. Nichols-Roy : I do not see any reason why you should put under paragraph 19 a matter which is already covered by paragraph 10.

Mr. President : The idea is to put in "sub-clause *(d)* of sub-paragraph *(2)* of paragraph 10", not the whole of paragraph 10.

The Honourable Rev. J. J. M. Nichols-Roy : What is the use of putting it here in this proviso? It is already there under paragraph 10.

The Honourable Dr. B. R. Ambedkar : Sub-clause *(d)* of sub-paragraph *(2)* of paragraph 10 covers only trading, not money-lending. That is what is sought to be included.

Mr. President : As regards the question of exclusion, it was in the original draft.

The Honourable Dr. B. R. Ambedkar : Mr. Nichols-Roy, it is all right. I do not think you stand to lose anything.

The Honourable Rev. J. J. M. Nichols-Roy : I am asking you whether or not you are going to put in the text an amendment to the effect giving power to Governor to exclude any area of an autonomous district.

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*CAD, Vol. IX, 7th September 1949, pp. 1075-1076.

The Honourable Dr. B. R. Ambedkar: "Exclude" also we are giving. To "diminish" means really "exclude".

Mr. President: "Diminish" means "exclude".

[Paragraph 19, as amended and the Table, Parts I and II were added to the Sixth Schedule.]

(*Paragraph 20*)

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That after paragraph 19, the following new paragraph be inserted :—

'20. *Amendment of the Schedule.—(1)* Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph *(1)* of this paragraph shall be deemed to be an amendment of this Constitution for purpose of article 304 thereof."

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†**The Honourable Dr. B. R. Ambedkar :** I do not accept the amendment (to paragraph 20 of Sibban Lal Saksena).

[The motion of Dr. Ambedkar was adopted. Paragraph 20 was added to the Sixth Schedule. Schedule VI, as amended, was added to the Constitution.]

ARTICLE 281

‡**Mr. President:** Then we go to Article 281.

The Honourable Dr. B. R. Ambedkar : I move :

"That for article 281 the following be substituted :—

'281. In this Part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I or Part III of the First Schedule.' "

Interpretation

(Article 281 was added to the Constitution.)

ARTICLE 282 TO 282-C

The Honourable B. R. Ambedkar : Sir, I move

"That with reference to amendment No. 3034 of the List of Amendments (Volume II), for article 282, the following articles be substituted :—

282. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State.

'Recruitment and conditions of service of persons serving the Union or a State.'

*CAD, Vol. IX, 7th September 1949, p. 1079.

†*Ibid.,* pp. 1081-1082.

‡*Ibid.,* p. 1082.

Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Tenure of office or persons serving the Union or a State

282-A. (*1*) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Ruler of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor or Ruler of the State, any contract under which a person, not being a member of a defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or, the Governor or the Ruler, as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in the Union or State.

282-B. *(1)* No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this cause shall not apply—

(a) where a person is dismissed, or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(*b*) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;

(*c*) where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause *(b)* of the proviso to clause *(2)* of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

All-India Services:

282-C. *(1)* Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do. Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.' "

Sir, I do not propose, at this stage, to say anything on the amendment I have moved, because the article themselves are quite clear. There are several amendments which may raise some points of criticism, and I shall then be in a position to give the House the explanations that may be necessary in order to dispose of those amendments.

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***The Honourable Dr. B. R. Ambedkar:** I think my friend has said enough on the point and he need not continue. We have understood his point. We must get through today at least one article.

Dr. Monomohan Das : If that is the case, I shall stop.

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†Mr. President: The honourable Member (Mr. Kamath) has exceeded his time-limit. Does Dr. Ambedkar like to speak?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments.

[All amendments were negatived.]

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ARTICLE 282-B

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‡Shri R. K. Sidhva: We are prepared to sit and finish. We can sit for seven or eight hours.

Mr. President: That is not possible. We cannot sit for eight hours. After all we work like human beings. We cannot work like machines. So

*CAD, Vol. IX, 7th September 1949, p. 1088.

†*Ibid.,* p. 1090.

‡*Ibid.,* p. 1094.

I do not think it will be possible. What do you say, Dr. Ambedkar, is it possible to have an afternoon sitting today?

The Honourable Dr. B. R. Ambedkar : I expect to be back from the Cabinet meeting at about half past five. If the House is prepared to sit for two hours after that, I am quite prepared, but we have a Drafting Committee meeting from half past five onwards, because unless we are ready with the articles which have already been held up, it will be difficult to proceed. We have to go to another place to obtain a decision and then to come here. If the House so wishes, we can change the sitting of the Drafting Committee to some other time.

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***Mr. Naziruddin Ahmad :** ... There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** There is no amendment to delete clause *(3)*. Your amendment is only to delete sub-clause *(b)*.

Mr. Naziruddin Ahmad : Yes, I have given notice of this amendment too. See amendment No. 246.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Mr. Jaspat Roy Kapoor to delete clause *(3)* of 282B.

Mr. President: There is an amendment by the Honourable Member (Mr. Naziruddin Ahmad) also.

The Honourable Dr. B. R. Ambedkar: He can go on; I merely wanted to draw his attention.

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†**Mr. President:** I shall now put the amendments to vote Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar : I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate: these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal

*CAD, Vol. IX, 8th September 1949, p. 1104.

†*Ibid.,* pp. 1112-1114.

with the grounds of dismissal. The matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article is 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses *(a), (b)* and *(c),* notice need not be given. 'That is all what the article says. It has been, in my judgement, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath : (Interruption)...

The Honourable Dr. B. R. Ambedkar : I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend Mr. Kamath in his sense of propriety.

Shri H. V. Kamath : I am referring to the provisos to the article.

The Honourable Dr. B. R. Ambedkar: I am coming to the provisos. So far as clause *(2)* is concerned, I have no doubt in my mind that everybody who has got common sense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open for Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence, that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly

open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause *(a)*. I want to make this clear.

With regard to sub-clause *(b),* this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing section 240 of the Government of India Act was to give protection to the services. Even the British people, who were very keen on giving protection to the civil services, thought it necessary to introduce a proviso like sub-clause *(b)*. We have therefore not introduced a new thing which had not existed before. With regard to sub-clause *(c),* it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is provided that under sub-clause *(c)* the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it open a wide door to the President to abrogate the provisions contained in sub-clause *(2),* I am inclined to think that in the better interests of the State, it ought to be retained.

Coming to clause *(3),* this has been deliberately introduced. Suppose, this clause *(3)* was not there, what would be the position? The position would be that any person, who has not been given notice under sub-clause *(a)* or *(b)* or *(c),* would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction' : is it a subjective state of mind of the officer himself or an objection state, that is to say, depending upon circumstances? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause *(3)* had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses *(a), (b)* and *(c)* of clause *(2)*. I submit that

again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by an officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provision relating to Public Service Commission.

[In all 15 amendments were negatived. The original amendment of Dr. Ambedkar—Article 282-B was adopted, and added to the Constitution.]

ARTICLE 282-C

***Mr. President:** There is no other amendment to this article. You wanted to speak, Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words :

> "If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do."

I had intended to move a similar amendment, No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments, created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion mere was no point in making their introduction so difficult. Why should the proposal have the support of not less man two-thirds of the members present and voting of the Council of

*CAD, Vol. X, 8th September 1949, p. 1118.

States? I think these words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282C to some extent takes away the autonomy given to the States by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, article 282 is to secure the consent of two thirds of the members of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282C.

[The motion of Dr. Ambedkar was adopted. Amendment by Brijeshwar Prasad was rejected. Article 282-C was added to the Constitution.]

ARTICLE 283

***Mr. President :** Then we come to article 283. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for amendment No. 3037 of the List of Amendments (Volume II), the following be substituted :—

"That for article 283 the following article be substituted :—

283. Until other provisions is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution'."

Transitional Provision.

*CAD, Vol. IX, 8th September 1949, p. 1119.

This is a purely transitional provision.

[The motion was adopted. Article 283 was added to the Constitution.]

ARTICLE 302

Mr. President: Then we take up article 302. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I move :

"That in clause *(1)* of article 302, after the words 'Governor' the words 'or Ruler' be inserted."

"That in the second proviso to clause *(1)* of article 302, for the words and figures 'bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution' the words 'bring appropriate proceedings against the Government of India or the Government of a State' be substituted."

"That in clause *(2)* of article 302, after the word 'Governor' the word 'Ruler' be inserted."

"That in clause *(3)* of article 302, after the word 'Governor' the words 'or Ruler' be inserted."

"That in clause *(4)* of article 302—

(a) after the word 'Governor' in the first place where it occurs, the words 'or Ruler' be inserted;

(b) for the word 'Governor' in the second place where it occurs, the words 'as Governor or Ruler' be substituted; and

(c) after the word 'Governor' in the third place where it occurs, the words 'or the Ruler' be inserted."

An Honourable Member: What about 13, Sir?

Mr. President: It is not in the Order paper. It is held over.

The Honourable Dr. B. R. Ambedkar : Amendments 14,16,17 and 18 are purely drafting amendments. The only amendment perhaps which requires an explanation is No. 15. The reason for bringing in this amendment is that reference to Chapter III really means reference to article 274. Article 274 deals with the right of suit against Government and that article is divided into two parts. One part deals with the right of suit as exists on the date of the commencement of the Constitution. The other part is regarding the power of Parliament to make further provision with regard to the right of suit against Government. If the words as there remain, it would only mean that the right of suit against Government would be in terms of 274 as it would be on the date of commencement of the Act. The substitution of the words "appropriate proceedings" is intended to cover not only the right of suit as it would exist on the date of commencement of the Act, but also as to subsequent proceedings which Parliament may by law provide against the Government of the day. That is the reason for this amendment.

*CAD, Vol. IX, 8th September 1949, pp.1119-1120.

I might also mention to the House that I find that if this amendment is carried, I shall also have to bring in a small consequential amendment in article 202 where there has been a sort of omission.

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***Mr. President:** Dr. Ambedkar, there is an amendment moved by Mr. Kamath that in clause *(1)* of article 302, for the word "duties" the word "functions" be substituted.

The Honourable Dr. B. R. Ambedkar : The word "functions" is a large word and it includes both powers and duties. We have said powers and duties which include all the functions that we can have. It is unnecessary to have any kind of amendment like that.

Mr. President: The question is :

"That is clause *(1)* of article 302 for the word 'duties' the word 'functions' be substituted."

The amendment was negatived.

Mr. President: That is the only amendment that has been moved. I shall now put the amendment put by Dr. Ambedkar.

Shri T. T. Krishnamachari : The whole lot can be put together.

Mr. President: If the Members want that, I shall put them separately. Very well. I shall put them together.

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, I move;

"That the heading above article 243, and article 243, 244 and 245 be omitted."

That might be put, so that the others may be taken separately. It is an independent thing.

(The motion was adopted.)

The heading above article 243, and articles 243, 244 and 245 were deleted.

PART XA

‡The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after Part X, the following new Part be inserted, namely :—

"PART XA

Trade, Commerce and Intercourse within the territory of India.

274-A. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Freedom of trade commerce and intercourse throughout the territory.

*CAD, Vol. IX, 8th September 1949, p. 1122.

†*Ibid.,* p. 1123.

‡*Ibid.,* pp. 1123-1124.

274-B. Parliament may, by law enacted by virtue of powers conferred by this Constitution, impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory law of India as may be required in the public interest.

Power of Parliament to impose restrictions on trade, commerce and intercourse by law.

274-C. *(1)* Notwithstanding anything contained in article 274-B of this Constitution neither parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule.

Restrictions of the legislative powers of the Union and of the States with regard to the trade and commerce.

(2) Nothing in clause *(1)* of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

274-D. Notwithstanding anything contained in article 274 or article 274-C of this Constitution, the legislature of a State may, by law—

Restrictions on trade, commerce and intercourse among State.

(a) impose on goods which have been imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purpose of clause *(b)* of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President.

274-E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274-A, 274-B, 274-C and 274-D of this Constitution, and confer on authority so appointed such powers and such duties as it thinks necessary.' "

Appointment of authority to carry out the provisions of articles 274A to 274D.

Sir, all that I need do at this stage is to inform the House that originally the articles dealing with freedom of trade and commerce were scattered in different parts of the Draft Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. It was found in the course of discussion that a large number of members of the House

were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out *seriatim,* so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India I should also like to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274-E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate, I shall be glad to offer the necessary explanation.

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ARTICLE 274-A

***The Honourable Dr. B. R. Ambedkar :** Mr. President, I do not think that I can usefully add anything to what my friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

[All 3 amendments were negatived. Article 274-A was added to the Constitution.— Ed.]

*CAD, Vol. IX, 8th September 1949, p. 1142.

ARTICLE 264

***The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Sir, I move:

"That for article 264, the following article be substituted :—

"264. *(1)* The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State.

Exemption of property of the Union from State Taxation.

(2) Nothing in clause *(1)* of this article shall, until Parliament by law otherwise provides, prevent any local authority within a State from imposing any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable so long as that tax continues to be levied in that State."

I will speak after the amendments have been moved, if there is any debate.

* * * * *

†Pandit Laxmi Kant Maitra: ...According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

The Honourable Dr. B. R. Ambedkar : You have taken more than five minutes.

* * * * *

‡Shri Chimanlal Chakubhai Shah : .. .I would therefore request Dr. Ambedkar to consider these two points, namely, (1) whether in article 266 it is not necessary...

The Honourable Dr. B. R. Ambedkar: We are for the moment considering 264 and 266. That may be dealt with when we come to article 266.

* * * * *

#Mr. President: The view points have been placed before the House. Dr. Ambedkar will now reply to the debate.

The Honourable Dr. B. R. Ambedkar : Sir, I will first refer to the provisions contained in clause *(2)* of the proposed article 264. I think it would be agreed that the intention of this clause *(2)* is to maintain the *status quo.* Consequently under the provisions of clause *(2)* those munici-

*CAD, Vol. IX, 9th September 1949, p. 1147.

†*Ibid.,* p. 1153.

‡*Ibid.,* p. 1155.

#*Ibid.,* pp. 1157-1160.

palities which are levying any particular tax on the properties of the Union immediately before the commencement of the Constitution or on such property as is liable or treated as liable for the levy of these taxes, will continue to levy those taxes. All that clause *(2)* does is that Parliament should have the authority to examine the nature of the taxes that are being imposed at present. There is nothing more in clause *(2),* except the saving clause, viz., "until Parliament by law otherwise provides". Until Parliament otherwise provides the existing local authorities, whether they are municipalities or local boards, will continue to levy the taxes on the properties of the Centre. Therefore, so far as the *status quo* is concerned, there can be no quarrel with the provisions contained in article 264.

The only question that can arise is whether the right given by clause *(2)* should be absolute or should be subject to the proviso contained therein, until Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

Pandit Hirday Nath Kunzru : (United Provinces : General): Which is the other place that my honourable Friend is referring to? Is there any other Chamber of the Assembly?

The Honourable Dr. B. R. Ambedkar : It is unmentionable and therefore I am saying "another place". Because the arguments that I presented there have been reproduced in a garbled fashion I think they have not succeeded in impressing the House with their importance and therefore I should like to repeat my arguments because they are my own, and I should like to repeat them in the way I should like the House to understand them.

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,—to allow that organisation a right *ad infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the

State. It is quite impossible for the Centre to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the Central Government. Consequently, not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

That is the reason why in clause *(2)* it is proposed to make this reservation that parliament should have an opportunity to examine the taxing power of the local authority, the amount of tax that they propose to levy, before parliament will submit itself to allow its property to be taxed by the local authority. As I said, there is not the slightest intention on the part of the parliament or on the part of those who have proposed this article, that parliament when it exercises this authority which is given to it by clause *(2)* will exempt itself completely from the taxation levied by the local authority. The only reason why this proviso is introduced is to allow Parliament an opportunity to examine the taxation proposals before it is called upon to submit itself to that taxation. I do not think that there is any inequity so far as clause *(2)* is concerned. Secondly, clause *(2)* does not take away anything by way of the financial resources now possessed by the local authorities from what they are getting now.

There is, however, one point which I have discovered now, that is a sort of lacuna in clause *(1)* which I am prepared to rectify. Clause *(2)* deals with the cases of those municipalities or local authorities which have been levying that tax. We also think that it is desirable that this right should not be confined to those municipalities or local authorities which have been exercising that right, but Parliament may also extend that privilege of taxing the property of the Centre to those municipalities and local boards which have not so far exercised that power or failed to do that. Therefore, I am prepared to introduce these words in clause *(1)*:

> "After the words 'The property of the Union shall' the words 'save in so far as Parliament may by law otherwise provide', be added."

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to

make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

Shri Syamanandan Sahaya : (Bihar: General): Even under the existing Government of India Act, 1935, municipalities were not allowed to tax buildings belonging to the Government of India.

The Honourable Dr. B. R. Ambedkar : That is what I have said. I could have elaborated the argument a great deal but I do not want to do it because I have accepted that the *status quo* should be maintained. Purely from the constitutional point of view, I would have tremendous objection to clause *(2)* and I would not allow it, but we are not having a clean slate; we are having so much written on it and therefore I do not want to wipe off what is written. That is the reason why I will have clause *(2)* and also modify clause *(1)* to permit Parliament to enable those municipalities which have not been taxing Central property to tax them.

Babu Ramnarayan Singh : Dr. Ambedkar said Parliament will consider the respective claims of the local bodies later on. I want to know what will be the immediate effect of the passing of this Constitution. For instance, in my province of Bihar certain district boards, especially the District Board of Hazaribagh, always gets a large amount of money from the Government colliery as road cess. May I know whether that payment will be stopped as soon as this Constitution is passed or will it continue to be paid till it is decided upon by the Parliament?

The Honourable Dr. B. R. Ambedkar : Sir, I cannot express any opinion upon individual taxes that are being levied, but the general proposition is quite clear that if any municipality or local board has been levying a tax that tax will continue to be levied against the property of the Centre and against such other property as will be held liable to taxation. There will be no change in the position of those municipalities which are levying those taxes.

Shri R. K. Sidhva : At present under the Indian Railways Taxation Act, a notification has to be issued in the event of local bodies demanding payment of tax. May I know whether Dr. Ambedkar is prepared to consider that section to be amended? Of course it cannot be amended here but is there any assurance from the Railway Minister that it is going to be amended in Parliament?

The Honourable B. R. Ambedkar : Sir, I wish my Friend Mr. Sidhva drew a proper lesson from the Railway Taxation Act. Parliament voluntarily submitted itself by passing an Act to allow the properties of the Railways to be taxed by the local authorities. Any Parliament can voluntarily submit its properties to be taxed by local authorities and there is no reason to suspect that Parliament will not volunteer to allow its other properties also to be taxed in the same manner. If the Railway Property Taxation Act is not properly carried out or if there is any lacuna, it would be open to Parliament to amend it, and I suppose it would be also open to Mr. Sidhva to go to a court of law and have the money paid if it becomes payable and due under the Railway Property Taxation Act.

[Mr. Sidhva withdrew his amendment. Article 264, as modified by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 265

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***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in article 265, for the words 'a Union railway', wherever the occur, the words 'any railway', be substituted."

This is mainly consequential upon the changes we have made in List I of Schedule VII.

[The amendment was adopted. Article 265, as amended, was added to the Constitution.]

NEW ARTICLE 265-A

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 265, the following article be inserted:—

'265-A. *(1)* Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Exemption from taxation by States in respect of water or electricity in case of certain authorities.

Explanation.—In this clause, the expression "law in force" has the same meaning as in article 307 of this Constitution'."

In the following paragraph of the article, I wish to introduce some new words with your permission and move it with those words.

"*(2)* The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause *(1)* of this article but no such law shall have any effect unless it has after having been

*CAD, Vol. IX, 9th September 1949, p. 1160.

†*Ibid.,* p. 1161.

reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order."

[New Article 265-A was added to the Constitution.]

ARTICLE 266

***The Honourable Dr. B. R. Ambedkar :** Sir, I move:

"That for article 266 the following article be substituted :—

'266. *(1)* The property and income of a State shall be exempt from Union Taxation.

Exemption of the Government of States in respect of Union Taxation.

(2) Nothing in clause *(1)* of this article shall prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income occuring or arising therefrom.

(3) Nothing in clause *(2)* of this article shall apply to any trade or business, or to any class of trade or business, which Parliament, may, by law declare as being incidental to the ordinary functions of government'."

* * * * *

SEVENTH SCHEDULE

ARTICLE 250—*(contd.)*

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after entry 88 in List I of the Seventh Schedule, the following entry be inserted :—

'88.A. Taxes on the sale or purchase of newspapers and on advertisements published therein'."

I also move:

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted :—

'58. Taxes on the sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers.' "

Sir, with your permission I shall move the other amendment—No. 374—to article 250 also as it is really part of this.

I move:

"That in clause *(1)* of article 250, after sub-clause *(d),* the following sub-clauses be added:—

"*(e)* taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.' "

*CAD, Vol. IX, 9th September 1949, p. 1161.

†*Ibid.,* pp. 1172-1173.

Shri T. T. Krishnamachari: I would like to mention that the formal permission of the House will have to be obtained to reopen article 250 which it will be necessary to do in respect of amendment No. 374.

Shri R. K. Sidhva : I raise a point of order that an article which has been completed and passed by the House cannot be reopened.

Mr. President: That is just the point that Mr. Krishnamachari has raised.

Shri R. K. Sidhva: No, Sir. He has moved an amendment to reopen the subject I am raising a point or order that it cannot be reopened.

The Honourable Dr. B. R. Ambedkar: That the President will decide—whether you are right or he is right.

Mr. Naziruddin Ahmad : There is another matter to which I would like to draw your attention. In regard to the amendment to entry 88-A it is the same amendment as that of Mr. Jhunjhunwala. It has now been stolen by the Drafting Committee and is being passed on as their own. Curiously enough, Dr. Ambedkar's amendment No. is 379 which is the section of the Indian Penal Code relating to theft. Can this sort of literary piracy be allowed?

Mr. President: You can take credit for having pointed it out.

The Honourable Dr. B. R. Ambedkar : He is quite content with that. He has not lodged a complaint of theft or robbery.

Mr. Naziruddin Ahmad : But theft is a cognizable offence. It is also non-compoundable. It does not depend on the complaint of any one, absence of objection will not execuse it.

Mr. President: We shall deal with the entries first.

The Honourable Dr. B. R. Ambedkar : Sir, when this matter came up last time before the House there was a lot of debate as to what was exactly intended, what the House could do and what I was prepared to accept. You were kind enough to say that the matter might be recommitted to the Drafting Committee. The Drafting Committee after consideration of the same has brought forth new proposals. The proposals are that newspapers and taxes on advertisements in newspapers should be put in List I. That is a matter to which the Drafting Committee has now agreed. The second amendment—No. 379—is merely a consequential thing because since newspapers and taxes on the sale of newspapers and advertisements therein have been brought into List I, it is necessary to exclude the taxation on newspapers under the Sales Tax Act and advertisement therein from the jurisdiction of the State Legislature.

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ENTRY 58

***The Honourable Dr. B. R. Ambedkar :** Sir, in view of what my honourable Friend Mr. Sidhva said that I have been inconsistent in my attitude towards these entries, I should like to offer one or two observations by way of explanation. Sir, I said in the course of the debate that took place last time over this matter that the newspapers were very intimately connected with article 13 which deals with Fundamental Rights. Therefore in making any provision with regard to newspapers that is a matter which has to be borne in mind.

The second thing is that so far as any regulation of fundamental rights is concerned, under article 27 of the Constitution which we have already passed we have left all matters of legislation regarding fundamental rights to Parliament and we have not left any power with the States. It therefore appeared to me and also to the Drafting Committee that in view of these consideration, namely, that newspapers were coming under fundamental rights, and all laws regarding fundamental rights were being left to Parliament, it was only a natural corollary that newspapers for purposes of taxation should also come under the authority of the Centre.

A third consideration which prevailed with the Drafting Committee as well as with myself was that in view of the fact that newspapers were connected with fundamental rights, namely, the freedom of expression and thought, it was desirable that any imposition that was levied upon them should be uniform and not vary from province to province. Such uniformity can be obtained only if the matter was left to Parliament to make laws. There are the three considerations which prevailed with me and prevailed with the Drafting Committee in the view that they have taken.

The only other consideration of importance was that this item was not purely an item dealing with making laws. It also dealt with lavying a tax in so far as newspapers were included in the term goods in entry 58 of List II. We therefore thought that in order not to deprive the provinces of such revenue as they might be able to make by imposing a levy upon newspapers under the Sales Tax Act, the proper thing to do was to include the sales tax on newspapers in article 250 which includes many other items and provides that if any taxation was levied upon them, the proceeds shall be distributed among the various provinces.

Therefore, the only question for consideration that arises is whether by making this transfer from List II to List I, we are injuring so to say the finances of the provinces. My answer is that we are not doing any injury

*CAD, Vol. IX, 9th September 1949, p. 1182-1183.

to the provinces because if the House would agree to carry my amendment No. 374, the provinces will get such portion of any tax on the sale of newspapers as they may have raised and now receive, under the amendment No. 374. In making these proposals, we have taken into consideration as I said the general proposition that newspapers having been connected, with fundamental rights, ought to come under the jurisdiction of the Centre, and that any financial gain which the provinces would have got should not be lost sight of. Both these considerations have prevailed with the Drafting Committee in making these changes.

I submit, notwithstanding the declarations of my honourable Friend Mr. Sidhva which I can understand, because he is smarting under a great injury which he suffered in another place, I say that there can be no objection to the entries that we have proposed.

Shri R. K. Sidhva : Sir, I take exception to Dr. Ambedkar's remarks when he said that I am smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw those remarks.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to withdraw them, Sir. But, I know it very well.

Mr. President : That settles the matter.

[The original amendment of Dr. Ambedkar, as shown above, was adopted and other amendments were rejected. Entries 58 and 58-A, as amended, were added to the State List of the Seventh Schedule.]

ARTICLE 250

***Shri T. T. Krishnamachari :** Dr. Ambedkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President : Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(No Member rose)

The Honourable Dr. B. R. Ambedkar : It is only a consequential thing, Sir.

Mr. President : There is no amendment to this. I shall put this to vote.

The question is :

"That in clause *(I)* of article 250, after sub-clause *(d),* the following sub-clauses be added : —

"(e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein'."

(The amendment was adopted.)

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*CAD, Vol. IX, 9th September 1949, p. 1184.

†*Ibid.,* pp. 1184-1185.

ARTICLE 202

Mr. President : Article 202.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause *(1)* of article 202, after the words 'to issue' the words 'to any person or authority including in appropriate cases any Government within those territories,' be inserted."

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows :—

"Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus,* mandamus, prohibition, *quo warranto* and *certiorari,* for the enforcement of any of the rights conferred by Part III of this Constitution for any other purposes."

It is just consequential.

Pandit Thakur Das Bhargava : (East Punjab : General) : Why do you say in appropriate cases?

The Honourable Dr. B. R. Ambedkar : Because appropriate cases will be laid down by law of Parliament.

[The amendment was adopted.]

ARTICLE 234-A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after article 234, the following new article be inserted : —

'234-A. *(1)* The executive power of the Union shall also extend to the giving of direction to a State to the measures to be taken for the protection as respects protection of railways, of the railways within the State.

Control of the Union over States as respects protection of Railways

(2) Where by virtue of any direction given to a State under clause *(1)* of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their behalf. It is possible

*CAD, Vol. IX, 9th September 1949, pp. 1185-1186.

that by reason of the special directions given by the Centre some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Centre and the Provinces so far as extra cost is concerned.

Dr. P. S. Deshmukh : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property....

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to extend my hearty support to clause *(1)* of this article, but I am thoroughly opposed to clause *(2)*. ...Therefore I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the president.

The Honourable Dr. B. R. Ambedkar : Sir, this clause is very necessary. My Friend Mr. Deshmukh when he said, that there were adequate provisions in the existing article we have passed—I am sorry to say—he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. Consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested *viz.,* to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested *viz*., that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered is hopelessly wrong.

Dr. P. S. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honourable Dr. B. R. Ambedkar : Because we find the railway property needs more attention. The safety of passengers is there.

[The motion of Dr. Ambedkar was adopted. New Article 234-A was added to the Constitution.]

NEW ARTICLE 242-A

***Mr. President :** Dr. Ambedkar, you may move amendment No. 372-A, regarding the heading.

Shri T. T. Krishnamachari : If No. 373 is passed, then the deletion of heading is consequential.

The Honourable Dr. B. R. Ambedkar : Sir, I move amendment No. 373 :

"That after article 242, the following new article be inserted : —

'242-A. *(1)* Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Adjudication of disputes relating to waters of inter state rivers or river valleys.

(2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause *(1)* of this article.' "

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereotyped to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R. K. Sidhva : Article 242 is proposed to be deleted, and so how does this new article 242-A come up alter article 242?

The Honourable Dr. B. R. Ambedkar : This one only indicates the position.

[Motion was adopted, New article 242-A was added to the constitution.]

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*CAD, Vol. IX, 9th September 1949, p. 1187.

***Mr. President :** Amendment No. 372-A.

The Honourable Dr. B. R. Ambedkar : Sir, I move; :

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

These are covered by article 242-A and therefore are unnecessary.

Mr. President : Does anyone wish to say anything about this amendment? There is no amendments. I then put it to the house.

(The motion was adopted.)

The heading above article 239, and articles 239, 240, 241, and 242 were deleted.

ARTICLES 248-A, 263 AND 263-A

†The Honourable Dr. B. R. Ambedkar : Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 382 becuase the rest are consequential.

Mr. President : All right.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 263, the following new article be inserted : —

'263-A. All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as case may be, or

Custody of suiter's deposits and other moneys received by public servants and courts.

(b) any court within the territory of India to the credit of any cause, matter, account or persons shall be paid into the public account of India or of the State, as the case may be.' "

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : I move amendment No. 380 and amendment No. 381. I move :

"That for article 248-A, the following article be substituted:—

'248A. *(1)* Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of India" and

Consolidated Funds and Public Accounts of India and of the States.

*CAD, Vol. IX, 9th September 1949, pp. 1188.

†*Ibid.,* pp. 1188-90.

all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled " The Consolidated Fund of the State."

(2) All over public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.' "

Amendment No. 381.

"That for article 263, the following article be substituted : —

'263. *(1)* The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

Custody of Consolidated Funds, Contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provisions in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the Slate.' "

Briefly, he changes are two-fold. In the original article No. 248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public money receive by the state otherwise than as part of the revenues or loans also because subject to an Appropriation Act, namely, the provision contained in sub-clause *(3)* of article 248A. Obviously the withdrawal of money which should strictly not "form part of the

Consolidated Fund of the State cannot be made subject to any Appropriation Act. They will be left open to be drawn upon in such manner, for such purposes and at such times subject to such conditions as may be laid down by Parliament in that behalf specifically. It is, therefore, to enlarge the definition expressly of the Consolidated Fund and to separate the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

[Motion was adopted. New article 263-A was added to the Constitution.]

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

***Mr. President :** The first item on the Order Paper today is notice of a motion by Dr. Ambedkar to introduce a Bill to abolish the jurisdiction of His Majesty in Council.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I move for leave to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.

Mr. President : The question is :

> "That leave be granted to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions."

(The motion was adopted.)

The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.

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DRAFT CONSTITUTION

NEW PART XIV-A—*(contd.)*

†Mr. President : I think these are all the amendments. If I have left out any, the Member who has given notice of the amendments may point out otherwise they may be taken as withdrawn by leave of the Assembly.

I shall now put the amendments moved by Mr. Munshi. But, there is an amendment by Mr. Tyagi to number the paragraphs.

The Honourable Dr. B. R. Ambedkar : That is a matter we will look to later on.

Shri Mahavir Tyagi : It has been accepted, Sir.

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*CAD, Vol. IX, 14th September 1949, p. 1425.

†*Ibid.,* p. 1485.

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***Shri T. T. Krishnamachari :** May I suggest, Sir, before adjourning the House, that you may put to vote articles 99 and 184 which this Chapter supersedes?

The Honourable Dr. B. R. Ambedkar : No; no. It is not in today's Order Paper.

Mr. President : This brings the proceedings of this evening to a close but before adjourning the House I desire just to say a few words of congratulation. I think we have adopted a Chapter for our Constitution which will have very far reaching consequences in building up the country as a whole. Never before in our history did we have one language recognised as the language of rule and administration in the country as a whole....

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NEW ARTICLE 112-B

†The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. President, Sir, I move :

"That after article 112-A, the following new article be inserted : —

'112-B. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to matters other than those referred to in the foregoing provisions of this Chapter in relation to which jurisdiction and powers were exercisable by His Majesty in Council immediately before the commencement of this Constitution under any existing law'."

Jurisdiction and powers of His Majesty in Council under existing law in certain cases to be exercisable by the Supreme Court.

Sir, the position is this that according to the ruling of the Privy Council there is a distinction between civil matters and matters relating to Income-tax and, for instance, acquisition proceedings. It has been held that the proceedings relating to Income tax and to acquisition of property do not lie within the purview of what are called 'civil proceedings.' And it might therefore be held that unless a special provision was made the powers of the Supreme Court were confined to civil proceedings. In order to remove that doubt this article 112-B is now proposed to be introduced so as to give the Supreme Court full powers over all proceedings, including civil proceedings and other proceedings which are not of a civil nature. That is the reason why this article is sought to be introduced.

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*CAD, Vol. IX, 14th September 1949, p. 1489.

†Ibid., 15th September 1949, p. 1493

***Mr. President :** Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of my Friend, Pandit Thakur Das Bhargava, I do not think that that amendment is necessary if he is really enlarging the jurisdiction of the Court. The word "practice" is generally taken to cover matters of procedure, and article 112-B which I have proposed does not deal with procedure but deals with substantive matter of jurisdiction. Therefore his amendment "or practice" is unnecessary.

With regard to the amendment of my Friend Prof. Shibban Lal Saksena, there are two points to which I would like to reply. The first is this, that if there is to be an appeal to the Supreme Court in matters of sentence of death passed by Courts-martial, then such a provision could be easily made by the Indian Army Act giving the accused person the right to appeal, and it has been provided, if I may draw my friend's attention to clause *(1)* of article 114, that the Supreme Court shall have such further jurisdiction and power with respect to any matters in the Union List. It reads : —

> "114*(1)* The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer."

If Parliament thinks that such a power should be vested in the Supreme Court, there is no impediment in the way of Parliament making an appropriate provision in the Army Act conferring such a power on them.

Again, I should like to draw attention to article 112 which deals with matters of special need. Under that it would be open to the Supreme Court to entertain an appeal against a Court-martial because therein the words used are—

> "any cause or matter made by any court or tribunal,"

and therefore, the wording being so large, no Court or tribunal could escape from the special jurisdiction of the Supreme Court provided under article 112. Therefore, my submission is that his amendment is also quite unnecessary.

With regard to the amendment of my friend Mr. Naziruddin Ahmad to omit the words "existing law"...

Mr. Naziruddin Ahmad : I have not moved that.

Mr. President : He has not moved it, he has left it to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : If he has left it to the Drafting Committee I am very glad, Sir. We shall certainly pay the best attention that his point deserves.

*CAD, Vol. IX, 15th September 1949, pp. 1495-1496.

Mr. President : Then I will put the amendments.

Prof. Shibban Lal Saksena : In view of the assurances given, I would like to withdraw my amendments.

Pandit Thakur Das Bhargava : I too am withdrawing my amendment, Sir.

The amendments were, by leave of the Assembly, withdrawn.

(Article 112B was added to the Constitution.)

NEW ARTICLE 15A

***Mr. President :** Then we go back to New Article 15A.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 15, the following article be inserted : —

'15A. (*1*) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

Protection against certain arrests and detentions.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in this article shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested under any law providing for preventive detention :

Provided that nothing in sub-clause *(b)* of clause *(3)* of this article shall permit the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention,

or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause *(4)* of this article.

(4) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained'."

Sir, the House will recall that when at a previous session of this Assembly we were discussing article 15, there was a great deal of controversy on the issue as to whether the words should be "except according to procedure established by law", or whether the words "due process" should be there in place of the words which now find a place

*CAD, Vol. IX, 15th September 1949, pp. 1496-1498.

in article 15. It was ultimately accepted that instead of the words "due process", the words should be "according to procedure established by law". I know that a large part of the House including myself were greatly dissatisfied with the wording of article 15. It will also be recalled that there is no part of our Draft Constitution which has been so violently criticised by the Public outside as article 15 because all that article 15 does is this, it only prevents the executive from making an arrest. All that is necessary is to have a law and the law need not be subject to any conditions or limitations. In other words, it was felt that while this matter was being included in the Chapter dealing with Fundamental Rights, we were giving a *carte blanche* to Parliament to make and provide for the arrest of any person under any circumstances as Parliament may think fit. We are therefore now, by introducing article 15A, making, if I may say so, compensation for what was done then in passing article 15. In other words, we are providing for the substance of the law of "due process" by the introduction of article 15A.

Article 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause *(1)* and clause *(2)* are already to be found in the Criminal Procedure Code and therefore probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of article 15A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Constitution itself.

It is quite true that the enthusiasts for personal liberty are probably not content with the provisions of clauses *(1)* and *(2).* They probably want something more by way of further safeguards against the inroads of the executive and the legislature upon the personal liberty of the citizen. I personally think that while I sympathise with them that probably this article might have been expanded to include some further safeguards, I am quite satisfied that the provisions contained are sufficient against illegal or arbitrary arrests.

As Members will see, the provisions contained in clauses *(1)* and *(2)* of article 15A are made subject to certain limitations which are set out in clause *(3)* which says that the provisions contained in clauses *(1)* and *(2)* of article 15A will not apply to any person who for the time being is

an enemy alien. I do not think that there could be any further objection to the reservation made in clauses *(3)(a)* in respect of an enemy alien.

With regard to sub-clause *(b)* of clause *(3)* I think it has to be recognised that in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order as mentioned in the Concurrent List or with the Defence Services of the country. In such a case I do not think that the exigency of the liberty of the individual should be placed above the interest of the State. It is on that basis that sub-clause *(b)* has been included within the provisions of clause *(3)*.

There again, those who believe in the absolute personal liberty of the individual will recognise that this power of preventive detention has been held in by two limitations : one is that the Government shall have power to detain a person in custody under the provisions of clause *(3)* only for three months. If they want to detain him beyond three months they must be in possession of a report made by an advisory board which will examine the papers submitted by the executive and will probably also give an opportunity to the accused to represent his case and come to the conclusion that the detention is justifiable. It is only under that that the executive will be able to detain him for more than three months. Secondly, detention may be extended beyond three months if Parliament makes a general law laying down in what class of cases the detention may exceed three months and state the period of such detention.

I think, on the whole, those who are fighting for the protection of individual freedom ought to congratulate themselves that it has been found possible to introduce this clause which, although it may not satisfy those who hold absolute views in this matter, certainly saves a great deal which had been lost by the non-introduction of the words 'due process of law'. Sir, I commend this article to the House.

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***Pandit Thakur Das Bhargava :** ...The House has just heard the speech of the honourable Mover of the main motion. I need not recall to the memory of the House the heated controversy which raged about a year and a quarter ago round the words 'due process of law'. Now a substantive part of the 'due process' has practically been given up after 70 per cent, being secured in article 13. I should think that in the circumstances of our country, this provision of 'due process' is certainly necessary cent per cent. It is the only right process in this country....

*CAD, Vol. IX, 15th September 1949, pp. 1500-1501.

The Honourable Dr. B. R. Ambedkar : Sir, may I say a word? I am prepared to accept one of the amendments of my honourable Friend which says that the accused shall have the right to be defended. I can add these words in the last line of clause *(1)* of article 15A. It will run thus : 'be denied the right to consult or to be defended by lawyers of his choice.' I think that will carry out my honourable Friends intention.

Pandit Thakur Das Bhargava : In trials as well as in criminal proceedings?

The Honourable Dr. B. R. Ambedkar : 'Defended' means that.

Could we not curtail the debate now?

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***Shri H. V. Kamath :** ...In order to obviate or at least mitigate the evils or the harm that might accrue from unjust arrest of people by the police or other authorities I wish to provide through this amendment specifically that the person arrested shall be informed of the grounds of his arrest within seven days following his arrest. The words used in this article moved by Dr. Ambedkar are "as soon as may be". I would be happy if the person is informed of the grounds even at the time of his arrest.

The Honourable Dr. B. R. Ambedkar : That is the intention. You are worsening the position by your amendment.

Shri H. V. Kamath : Why not then make it specific? I would welcome the substitution of the words "as soon as may be" by the word "immediately". My Friend Shrimati Purnima Banerjee, has also moved an amendment to the same article, where she wishes to substitute the words "as soon as may be" by "not less than fifteen days". I think fifteen days is far too long a period. I think twenty-four hours would be the best. In any case if there is any hitch in informing the arrestee of the grounds of his arrest, I think in no case should it exceed more than a week.

Coming, Sir, to the next amendment (No. 108), I beg to move :

> "That in amendment No. 1 of List I (Eighth Week), in clause *(2)* of the proposed new article 15A, after the word 'magistrate', occuring at the end, the words 'who shall afford such person an apportunity of being heard' be added."

The Honourable Dr. B. R. Ambedkar : I must tell my honourable Friend Mr. Kamath that he is worsening the position. Our intention is that the words "as soon as possible" really mean immediately after arrest, if not before arrest. Clause *(2)* says that every person who is arrested and detained in custody shall be produced before the nearest magistrate within

*CAD, Vol. IX, 15th September 1949, pp. 1515-16.

a period of twenty-four hours of such arrest. No magistrate can exercise his authority in permitting longer detention unless he knows the charges on which a man has been detained.

Shri H. V. Kamath : I know a little of the Criminal Procedure. I have known of cases where magistrates have remanded persons for fifteen days at a stretch without the police filling a *chalan* or charge sheet before him. I know of magistrates who have remanded persons without caring to go into the *prima facie* merits of the case. Another thing that Dr. Ambedkar said was that the words "as soon as may be" really means "immediately".

The Honourable Dr. B. R. Ambedkar : It means in any case within twenty-four hours.

Shri H. V. Kamath : May I invite his attention to certain articles where the words "as soon as may be" have been used without any specific connotation. Take for instance article 280 which relates to the Emergency Powers of the President.

The Honourable Dr. B. R. Ambedkar : The interpretation of the meaning of the words "as soon as may be" must differ with the context.

Shri H. V. Kamath : I do not know whether Dr. Ambedkar will be always in India to interpret and argue with doubting layers and doubting judges as to the meaning of the words and phrases used in this Constitution. I am sorry Dr. Ambedkar will not be immortal to guide our judges and lawyers in this country. As the Constitution is being framed not for Dr. Ambedkar's life time, but for generations to come, I think we must be specific in what we say.

The Honourable Dr. B. R. Ambedkar : You are selling your immortality very cheap.

Shri H. V. Kamath : I have no desire for physical immortality. It appears however that Dr. Ambedkar presumes he will be immortal.

The Honourable Dr. B. R. Ambedkar : You might admit you have made a mistake in tabling this amendment.

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***Shri H. V. Kamath :** ...Dr. Ambedkar in his speech referred to the enthusiastic champions of absolute liberty. I shall make it quite clear that I am not an advocate of *absolute* liberty.

Mr. President : He did not talk of absolute liberty today.

Shri H. V. Kamath : He did, Sir, if I remember aright. (The Honourable Dr. Ambedkar noded in the affirmative). He referred to absolute personal liberty. I am not a champion or advocate of absolute personal liberty....

*CAD, Vol. IX, 15th September 1949, p. 1518.

ARTICLE 15A

***Shri Mahavir Tyagi** (United Provinces : General) **:** Sir, Dr. Ambedkar will please pardon me when I express my fond wish that he and the other members of the Drafting Committee had had the experience of detention in jails before they became members of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : I shall try hereafter to acquire that experience.

Shri Mahavir Tyagi : I may assure Dr. Ambedkar that, although the British Government did not give him this privilege, the Constitution he is making with this own hands will give him that privilege in his life-time. There will come a day when they will be detained under the provisions of the very same clauses which they are making *(Interruption).*

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†Smt. G. Durgabai : ...Sir, I commend this article for the acceptance of the House.

Mr. President : I understand Dr. Ambedkar has to make certain suggestions to meet the criticisms that have been made against this article. I would therefore give him a chance to speak at this stage and if any further question arises we can consider it.

Babu Ramnarayan Singh (Bihar : General) **:** Does he agree to remove the article altogether?

Mr. President : No.

The Honourable Dr. B. R. Ambedkar : Sir, I relly did not think that so much of the time of the House would be taken up in the discussion of this article 15-A. As I said, I myself and a large majority of the Drafting Committee as well as members of the public feel that in view of the language of article 15, *viz.,* that arrest may be made in accordance with a procedure laid down by the law, we had not given sufficient attention to the safety and security of individual freedom. Ever since that article was adopted I and my friends had been trying in some way to restore the content of due procedure in its fundamentals without using the words "due process". I should have thought that Members who are interested in the liberty of the individual would be more than satisfied for being able to have the prospect before them of the provisions contained in article 15-A and that they would have accepted this with good grace. But I am sorry that is not the spirit which actuates those who have taken part in this

*CAD, Vol. IX, 16th September 1949, p. 1547.

†*Ibid.,* p. 1556-1565.

debate and put themselves in the position of not merely critics but adversaries of this article. In fact their extreme love of liberty has gone to such a length that they even told me that it would be much better to withdraw this article itself.

Now, Sir, I am not prepared to accept that advice because I have not the least doubt in my mind that that is not the way of wisdom and therefore I will stick to article 15-A. I quite appreciate that there are certain points which have been made by the various critics which require sympathetic consideration, and I am prepared to bestow such consideration upon the points that have been raised and to suggest to the House certain amendments which I think will remove the criticism which has been made that certain fundamentals have been omitted from the draft article 15-A. In replying to the criticism I propose to separate the general part of the article from the special part which deals with preventive detention; I will take preventive detention separately.

Now turning to clause *(1)* of article 15-A, I think there were three suggestions made. One is with regard to the words "as soon as may be". There are amendments suggested by Members that these words should be deleted, and in place of those words "fifteen days" and in some places "seven days" are suggested. In my judgement, these amendments show a complete misunderstanding of what the words "as soon as may be" mean in the context in which they are used. These words are integrally connected with clause *(2)* and they cannot, in my judgement, be read otherwise than by reference to the provisions contained in clause *(2),* which definitely say that no man arrested shall be detained in custody for more than 24 hours unless at the end of the 24 hours the police officer who arrests and detains him obtains an authority from the magistrate. That is how the section has to be read. Now it is obvious that if the police officer is required to obtain a judicial authority from a magistrate for the continued arrest of a person after 24 hours, it goes without saying that he shall have at least to inform the magistrate of the charge under which that man has been arrested, which means that "as soon as" cannot extend beyond 24 hours. Therefore all those amendments which suggest fifteen days or seven days are amendments which really curtail the liberty of the individual. Therefore I think those amendments are entirely misplaced and are not wanted.

The second point raised is that while we have given in clause *(1)* of article 15-A a right to an accused person to consult a legal practitioner of his choice, we have made no provision for permitting him to conduct

his defence by a legal practitioner. In other words, a distinction is made between the right to consult and the right to be defended. Personally I thought that the words "to consult" included also the right to be defended because consultation would be utterly purposeless if it was not for the purpose of defence. However, in order to remove any ambiguity or any argument that may be raised that consultation is used in a limited sense, I am prepared to add after the words "to consult" the words "and be defended by a legal practitioner", so that there would be both the right to consult and also the right to be defended. A question has been raised by the last speaker as to the meaning of the words "legal practitioner of his choice". No doubt the words "of his choice" are important and they have been deliberately used, because we do not want the Government of the day to foist upon an accused person a counsel whom the Government may think fit to appear in his case because the accused person may not have confidence in him. Therefore we have used the words "of his choice". But the words "of his choice" are qualified by the words "legal practitioner". By the phrase "legal practitioner" is meant what we usually understand, namely, a practitioner who by the rules of the High Court or of the Court concerned, is entitled to practise.

Now, Sir, I come to clause *(2)*. The principal point is that raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the word "Magistrate" by the words "First class Magistrate". Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause *(2)* used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whome he wanted to take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he had a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words "the nearest Magistrate". Now supposing, we were to add the words "the nearest First Class Magistrate" : the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice; whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near-about, or whether we should go in search of

a First Class Magistrate. I think "the nearest Magistrate" is the best provision in the interests of the liberty of the accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment—"the nearest First Class Magistrate"—it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it.

Now, those are the general provisions as contained in article 15*(a),* and I am sure...*

Pandit Thakur Das Bhargava : Kindly consider...

The Honourable Dr. B. R. Ambedkar : Now, my Friend, Pandit Thakur Das Bhargava has raised the question of the right of cross-examination.

Pandit Thakur Das Bhargava : And for reasons recorded.

The Honourable Dr. B. R. Ambedkar : Well, that I think is a salutary provision, because I think that the provision which occurs in several provisions of the Criminal Procedure Code making it obligatory upon the Magistrate to record his reasons in writing enables the High Court to consider whether the discretion left in the Magistrate has been judicially exercised. I quite agree that that is a very salutary provision, but I really want my friend to consider whether in a matter of this kind, where what is involved is remand to custody for a further period, the Magistrate will not have the authority to consider whether the charge framed against the accused by the police is *prima facie* borne out.

Pandit Thakur Das Bhargava : At present also under section 167(3) these words are there. It is today incumbent upon every Magistrate to whom a person is taken to record the reasons if he allows the detention to continue.

The Honourable Dr. B. R. Ambedkar : That is quite true. They are there. But are they very necessary ?

Pandit Thakur Das Bhargava : Absolutely necessary!

The Honourable Dr. B. R. Ambedkar : Personally, I do not think they are necessary. Let us take the worst case. A Magistrate, in order to please the police, so to say, got into the habit of granting constant remands, one after the other, thereby enabling the police to keep the accused in custody. Is it the case that there is no remedy open to the

*Dots indicate interruption as shown in original.

accused ? I think the accused has the remedy to go to High Court for revision and say that the procedure of the Court is being abused.

Pandit Thakur Das Bhargava : How can a poor person go to the High Court ?

The Honourable Dr. B. R. Ambedkar : I do not want to close my mind on it. If there is the necessity I think the Drafting Committee may be left to consider this matter at a later stage, whether the introduction of these words are necessary. As at present advised, we think those words are not necessary.

Now I come to the second part of article 15*(3)* dealing with preventive detention. My Friend, Mr. Tyagi, has been quite enraged against this part of the article. Well, I think I can forgive my Friend, Mr. Tyagi, on that ground because after all, he is not a lawyer and he does not really know what is happening. He suddenly wakes up, when something which is intelligible to a common mind, crops up without realizing that what crops up and what makes him awake is really merely consequential. But I cannot forgive the layer members of the House for the attitude that they have taken.

What is it that we are doing ? Let me explain to the House what we are doing now. We had before us the three Lists contained in the Seventh Schedule. In the three Lists there were included two entries dealing with preventive detention, one in List I and another in List III. Supposing now, this part of the article dealing with preventive detention was dropped. What would be the effect of it ? The effect of it would be that the Provincial Legislatures as well as the Central Legislature would be at complete liberty to make any kind of law with preventive detention, because if this Constitution does not by a specific article put a limitation upon the exercise of making any law which we have now given both to the Centre and to the Provinces, there would be no liberty left, and Parliament and the Legislatures of the States would be at complete liberty to make any kind of law dealing with preventive detention. Do the lawyer Members of the House want that sort of liberty to be given to the Legislatures of the States and Parliament ? My submission is that if their attitude was as expressed today, that we ought to have no such provision, then what they ought to have done was to have objected to those entries in List I and List III. We are trying to rescue the thing. We have given power to the Legislatures of the State and Parliament to make laws regarding preventive detention. What I am trying to do is to curtail that power and put a limitation upon it. I am not doing worse. You have done worse.

Coming to the specific provision contained in the second part, I will first...*

Pandit Thakur Das Bhargava : Who made those Lists ?

The Honourable Dr. B. R. Ambedkar : I made them : you passed them !

I had these limitations in mind. Now I come to the proviso to clause 3*(b)*.

Shri Mahavir Tyagi : Will you help laymen to understand as to why you have not provided for the revision by the Advisory Board of the cases under clause *(4)* ?

The Honourable Dr. B. R. Ambedkar : I cannot explain to him the legal points in this House. This House is not a law class and I cannot indulge in that kind of explanation now. The honourable Member is my friend; if he does not understand he can come and ask me afterwards.

Now I will deal with the proviso which is subject to two sorts of criticisms. One criticism is this : that in the case of persons who are being arrested and detained under the ordinary law as distinct from the law dealing with preventive detention, we have made provision in clause *(1)* of article 15A that the accused person shall be informed of the grounds of his arrest. I said we do not make any such provision in the case of a person who is detained under preventive detention. I think that is a legitimate criticism. I am prepared to redress the position, because I find that, even under the existing laws made by the various provincial governments relating to preventive detention, they have made provision for the information of the accused regarding the grounds on which he has been detained. I personally do not see any reason why when provinces who are anxious to have preventive detention laws have this provision, the Constitution should not embody it. Therefore I am prepared to incorporate the following clause after clause *(3)* in article 15A :

> "*(3a)* Where an order is made in respect of any person under sub-clause *(b)* of clause *(3)* of this article, the authority making an order shall...."

Babu Ramnarayan Singh : Sir, Dr. Ambedkar says that provinces want the inclusion of this clause...

Mr. President : He has not said anything of that sort. What he has said is that several of the Acts which have been passed by the provinces for preventive detention contain certain provisions. He wants to incorporate a similar provision in this article.

Babu Ramnarayan Singh : I wanted to know whether we are passing legislation at the dictates of the provinces.

Mr. President : Nothing of the sort.

*Dots indicate interruption.

The Honourable Dr. B. R. Ambedkar : I find that Mr. Ramnarayan Singh is somewhat disaffected with the provincial government to which he belongs.

As I was saying, I think this provision ought to do :

After clause *(3)* of article 15A, the following clause be inserted :

"*(3a)* Where an order is made in respect of any person under sub-clause *(b)* of clause *(3)* of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been passed and afford him the earliest opportunity of making a representation against the order.

(b) Nothing in clause *(3a)* of this article, shall require the authority making any order under sub-clause *(b)* of clause *(3)* of this article to disclose the facts which that authority considers to be against the public interest to disclose."

These are the exact words in some of the Acts of the provinces and I do not see any reason why they should not be introduced here, so that this ground of criticism that we arc detaining a person merely because his case comes under preventive detention, without even informing him of the grounds on which we detain him. Now that is met by the amendment which I have proposed.

The other question is...*

The Honourable Shri K. Santhanam (Madras : General) **:** Is it in addition to the provision in clause *(1)* ? There is already a provision that no person shall be detained in custody without being informed.

The Honourable Dr. B. R. Ambedkar : It does not deal with persons arrested for preventive detention.

The Honourable Shri K. Santhanam : Does it not include a person who is arrested for preventive purposes ? I thought clause *(1)* includes every kind of detention.

The Honourable Dr. B. R. Ambedkar : No. That is not our understanding anyhow. The cases are divided into two categories.

Shri Mahavir Tyagi : He is a lawyer.

The Honourable Dr. B. R. Ambedkar : That is in a court of law, not here.

Mr. President : He is not a lawyer.

The Honourable Dr. B. R. Ambedkar : I think it would be much better to say : Nothing in clauses *(1)* and *(2)* shall apply to clause *(3).* That is the intention. So I have met that part of their criticism.

Now I come to the question of three months' detention without enquiry or trial. Some Members have said that it should not be more than 15 days and others have suggested some other period and so on. I would like to tell the House why exactly we thought that three months was a tolerable

*Dots indicate interruption.

period and 15 months too long. It was represented to us that the cases of detenus may be considerable. We do not know how the situation in this country will develop, what would be the circumstances which would face the country when the Constitution comes into operation, whether the people and parties in this country would behave in a constitutional manner in the matter of getting hold of power, or whether they would resort to unconstitutional methods for carrying out their purposes. If all of us follow purely constitutional methods to achieve our objective, I think the situation would have been different and probably the necessity of having preventive detention might not be there at all.

But I think in making a law we ought to take into consideration the worst and not the best. Therefore if we follow upon that position, namely, that there may be many parties and people who may not be patient enough, if I may say so, to follow constitutional methods but are impatient in reaching their objective and for that purpose resort to unconstitutional methods, then there may be a large number of people who may have to be detained by the executive. Supposing there is a large number of people to be detained because of their illegal or unlawful activities and we want to give effect to the provisions contained in sub-clause *(a)* of that proviso, what would be the situation ? Would it be possible for the executive to prepare the cases, say against one hundred people who may have been detained in custody, prepare the brief, collect all the information and submit the cases to the Advisory Board ? Is that a practical possibility ? Is it a practical possibility for the Advisory Board to dispose of so many cases within three months, because I will say that the provisions contained in sub-clause *(a)* of the proviso are peremptory in that if they want to detain a person beyond three months they must obtain an order from the Advisory Board to that effect.

Therefore, having regard to the administrative difficulties in this matter, the Drafting Committee felt that the exigencies of the situation would be met by putting a time limit of three months. There is no other intention on the part of the Drafting Committee in prescribing this particular time limit and I hope having regard to the facts to which I have referred the House will agree that this is as good and as reasonable a provision that could be made.

Now, I come to the Advisory Board. Two points have been raised. One is what is the procedure of the Advisory Board. Sub-clause *(a)* does not make any specific reference to the procedure to be followed by the Advisory Board. Pointed questions have been asked whether under sub-

clause *(a)* the executive would be required to place before the Advisory Board all the papers connected with the case which have led them to detain the man under preventive custody.

The pointed question has been asked whether the accused person would be entitled to appear before the Board, cross-examine the witnesses, and make his own statement. It is quite true that this sub-clause *(a)* is silent as to the procedure to be followed in an enquiry which is to be conducted by the Advisory Board. Supposing this sub-clause *(a)* is not improved and remains as it is, what would be the consequences ? As I read it, the obtaining of the report in support of the order is an obligatory provision. It would be illegal on the part of the executive to detain a man beyond three months unless they have on the day on which the three months period expires in their possession a recommendation of the Advisory Board. Therefore, if the executive Government were not to place before the Advisory Board the papers on which they rely, they stand to lose considerably, that is to say, they will forfeit their authority to detain a man beyond three months.

Therefore, in their own interest it would be desirable. I think necessary, for the executive Government to place before the Advisory Board the documents on which they rely. If they do not, they will be taking a very grave risk in the matter of administration of the preventive law. That in itself, in my judgement, is enough of a protection that the executive will place before it.

If my friends are not satisfied with that, I have another proposal and that is that, without making any specific provisions with regard to procedure to be followed in sub-clause *(a)* itself, to add at the end of sub-clause *(4)* the following words :—"and Parliament may also prescribe the procedure to be followed by an Advisory Board in an enquiry under clause *(a)* of the proviso to clause *(3)* of this article," I am prepared to give the power to Parliament to make provision with regard to the procedure that may be followed by the Advisory Board. I think that ought to meet the exigencies of the situation.

Sir, these are all the amendments I am prepared to make in response to the criticisms that have been levelled against the different parts of the article 15A.

I will now proceed to discuss some miscellaneous suggestions.

Shri Jaspat Roy Kapoor : In that case, probably sub-section *(b)* of the proviso to clause *(2)* will go ?

The Honourable Dr. B. R. Ambedkar : Nothing will go.

Dr. Bakhshi Tek Chand (East Punjab : General) **:** You have agreed that the grounds of the detention will be communicated to the person affected and his explanation taken.

The Honourable Dr. B. R. Ambedkar : And he will also be given an opportunity to put in a written statement.

Dr. Bakhshi Tek Chand : Will you agree also to the other point to which I drew attention, namely, that as in the Madras Act, the explanation will be placed before the Board ?

The Honourable Dr. B. R. Ambedkar : All papers may be placed before him. That is what I say.

Dr. Bakhshi Tek Chand : All papers may not be placed before him. I have some experience. They will say that this is a very small matter. If you give him an opportunity to submit an explanation within a specified time, why do you light shy of incorporating this provision ? In sub-clause *(2)* of sub-section *(1)* of section 3 of the Madras Act there is provision that the explanation will be placed before the Board.

The Honourable Dr. B. R. Ambedkar : That, I consider, is implicit in what I said.

Dr. Bakhshi Tek Chand : Why not make it clear ? It is not there in the Bombay Act or in the United Provinces Act.

The Honourable Dr. B. R. Ambedkar : As I stated, in the requirement regarding the submission of papers to the Advisory Board under sub-clause *(a)* is implicit the submission of a statment by the accused. If that is not so, I am now making a further provision that Parliament may by law prescribe the procedure, in which case Parliament may categorically say that these papers shall be submitted to the Advisory Board. Now I am not prepared to make any further concession at all.

Shri Mahavir Tyagi : Dr. Ambedkar will please give me one minute ?

The Honourable Dr. B. R. Ambedkar : Not now.

Shri Mahavir Tyagi : I want to know whether the detenus under clause *(4),* according to the law made by Parliament or by the provinces, will have the benefit of their case being reviewed by the tribunal ?

Sir, I want to know whether the detenus who will be detained under the Act which Parliament will enact under clause *(4)* will have the privilege of their case being reviewed by the tribunal proposed ?

The Honourable Dr. B. R. Ambedkar : My Friend Mr. Tyagi is acting as though he is overwhelmed by the fear that he himself is going to be a detenu. I do not see any prospect of that.

Shri Mahavir Tyagi : I am trying to safeguard your position.

The Honourable Dr. B. R. Ambedkar : I will now deal with certain miscellaneous suggestions made.

Pandit Thakur Das Bhargava : What about the safeguards regarding cross-examination and defence ?

The Honourable Dr. B. R. Ambedkar : The right of cross-examination is already there in the Criminal Procedure Code and in the Evidence Act. Unless a provincial Government goes absolutely stark mad and takes away these provisions it is unnecessary to make any provision of that sort. Defending includes cross-examination.

Pandit Thakur Das Bhargava : They even try to usurp power to this extent.

The Honourable Dr. B. R. Ambedkar : If you can give a single instance in India where the right of cross-examination has been taken away, I can understand it. I have not seen any such case.

Sir, the question of the maximum sentence has been raised. Those who want that a maximum sentence may be fixed will please note the provisions of clause *(4)* where it has been definitely stated that in making such a law, Parliament will also fix the maximum period.

Pandit Hirday Nath Kunzru : The word is 'may'.

The Honourable Dr. B. R. Ambedkar : 'May' is 'shall'.

Pandit Hirday Nath Kunzru : Parliament may or may not do that.

The Honourable Dr. B. R. Ambedkar : That is true, but if it does, it will fix the maximum.

Another question raised is as regards the maintenance of the detenus and their families.

Shri Jaspat Roy Kapoor : What about periodical reviews ?

The Honourable Dr. B. R. Ambedkar : I am coming to that. That is not a matter which we can introduce in the Constitution itself. For instance, it may be necessary in some cases and may not be necessary in other cases. Besides, clause *(4)* gives power to Parliament also to provide that maintenance shall be given.

Personally, myself, I think the argument in favour of maintenance is very weak. If a man is really digging into the foundations of the State and if he is arrested for that, he may have the right to be fed when he is in prison; but he has very little right to ask for maintenance. However, *ex-gratia* Parliament and the Legislature may make provision. I think such a provision is possible under any Act that Parliament may make under clause *(4)*.

With regard to the review of the cases of detenus, there again, I do not see why it should not be possible for either the provincial Governments in their own law to make provision for periodical review or for Parliament in enacting a law under clause *(4)* to provide for periodical review. I think this is a purely administrative matter and can be regulated by law.

My Friend Mr. Ananthasayanam Ayyangar, said that I really do not have much feeling for the detenus, because I was never in jail, but I can tell him that if anybody in the last Cabinet was responsible for the introduction of a rule regarding review, it was myself. A very large part of the Cabinet was opposed to it. I and one other European member of the Cabinet fought for it and got it. So, it is not necessary to go to jail to feel for freedom and liberty.

Then there is another point which was raised by my Friend, Mr. Kamath. He asked me whether it was possible for the High Courts to issue writs for the benefit of the accused, in cases of preventive detention. Obviously the position is this. A writ of *habeas corpus* can be asked for and issued in any case, but the other writs depend upon the circumstances of each different man, because the object of the writ of *habeas corpus* is a very limited one. It is limited to finding out by the Court whether the man has been arrested under law, or whether he has been arrested merely by executive whim. Once the High Court is satisfied that the man is arrested under some law, *habeas corpus* must come to an end. If he has not been arrested, under any law, obviously the party affected may ask for any other writ which may be necessary and appropriate for redressing the wrong. That is my reply to Mr. Kamath.

Sir, I hope that with the amendments I have suggested the House will be in a position to accept the article 15A.

Mr. President : I will now put the amendments to the vote.

The Honourable Dr. B. R. Ambedkar : They might all be withdrawn.

Mr. Naziruddin Ahmad (West Bengal : Muslim) **:** New clauses have just been added. Will they be put to the vote now ?

Mr. President : Yes, just now ?

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***Mr. President :** The question is :

> "That in amendment No. 1 above, in clause *(1)* of the proposed new article 15A, for the words 'a legal practitioner of his choice' the words 'and he defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

*CAD, Vol. IX, 16th September 1949, p. 1566.

(The amendment was negatived.)

Mr. President : Then No. 7.

Shri T. T. Krishnamachari : Dr. Ambedkar has accepted a portion of this amendment. It need not be voted upon. If it is rejected, then Dr. Ambedkar will not be able to accept a portion of it.

The Honourable Dr. B. R. Ambedkar : Mine are independent amendments.

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***Mr. President :** ...I think these are all the amendments which we moved yesterday. Dr. Ambedkar has moved certain amendments today and I would put them to vote now.

[Six amendments were rejected.]

[Following amendments were adopted.]

"That in clause *(1)* of article 15A, after the word 'consult' the words 'and be defended by' be inserted."

"That in clause *(3)* of article 15A for the words "Nothing in this article' the words, brackets and figures 'Nothing in clauses *(1)* and *(2)* of the article' be substituted."

"That after clause *(3)* of article 15A, the following clauses be inserted —

'*(3a)* Where an order is made in respect of any person under sub-clause *(b)* of clause *(3)* of this article the authority making an order shall as soon as may be communicated to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

(3b) Nothing in clause *(3a)* of this article shall require the authority making any order under sub-clause *(b)* of clause *(3)* of this article to disclose the facts which such authority considers to be against the public interest to disclose.' "

"That at the end of clause *94)* of article 15A, the following be added : —

'and Parliament may also prescribed by law the procedure to be followed by an Advisory Board in an enquiry under clause *(a)* of the proviso to clause *(3)* of this article.' "

Article 15 A, as amended, was added to the Constitution.

Mr. President : I am sorry I forgot to put Dr. Bakhshi Tek Chand's amendment to vote. Of course it was not necessary. It is covered by Dr. Ambedkar's amendments.

ARTICLE 209A

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 209, between Chapters VII and IX of Part VI the following be inserted : —

*CAD, Vol. IX, 16th September 1949, p. 1570.

†*Ibid.,* pp. 1570-1571.

"CHAPTER VIII

SUBORDINATE COURTS

Appointment of District Judges

209A. *(1)* Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the state in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years as advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of other than district judges to the Judicial service.

209B. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

Control over sub-ordinate Courts

209C. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person, the right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

209D. *(1)* In this chapter—

Interpretation

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service " means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts interior to the post of district judge.

Application of the provisions of this Chapter to certain classes of Magistrates.

209F. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.' "

Sir, the object of these provisions is two-fold; first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications. The second object is to place the whole of the civil judiciary under the control of the High Court. The only thing which has been excepted from the general provisions contained

in article 209A, 209B and 209C is with regard to the magistracy, which is dealt with in article 209E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Execution will be accepted by the other provinces so that the provisions of article 209E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary and the execution. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the province. This is all I think I need say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary was vested in the High Court. We are marely continuing the same in the present draft.

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***Shri R. K. Sidhva** (C. P. & Berar : General) **:** Sir, could you kindly call me again ? I had been out on some office business when my name was called; but I have to move an amendment which is important.

The Honourable Dr. B. R. Ambedkar : Absence cannot be an execuse.

Mr. President : I am afraid it is too late now.

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†The Honourable Dr. B. R. Ambedkar : With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

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*CAD, Vol. IX, 16th September 1949, p. 1575.

†*Ibid.,* pp. 1578-1579

There are two amendments—one by Mr. Chaliha and the other by Pandit Kunzru—which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgement a very small point and that point is this : whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209C to the High Court ? Now the provision as contained in the Government of India Act, 1935 was this that the appointment, posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this : whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court should have jurisdiction in these matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.

ARTICLE 215

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***The Honourable Dr. B. R. Ambedkar :** I have nothing to say, Sir.

Sardar Hukam Singh : Sir, I have no amendment to move. I have one objection to clause *(2)* of this article, to which I want to draw the attention of the President of the Drafting Committee. The phraseology looks to me as derogatory to the sovereignty of the Parliament and I would request him, if possible to change the words :

... I only want to bring this to the notice of the Chairman of the Drafting Committee.

Mr. President : Sardar Hukam Singh has made certain suggestions with regard to paragraph 2. He says that it is derogatory to the authority of Parliament to say that the President will repeal or amend any law made by Parliament and that the words should be so modified as to indicate that the power of Parliament is not in any way subordinated.

The Honourable Dr. B. R. Ambedkar : That is so. It is a kind of adaptation. In regard to the autonomous districts of Assam the Governor of Assam has similar power to adapt the laws made by Parliament when he thinks fit so to do. The whole law made by Parliament cannot be applied to certain peculiarly constituted territories unless they are adapted.

Sardar Hukam Singh : Is that a sufficient answer, Sir ? My suggestion was that it is derogatory to the sovereignty of Parliament to say that the President would repeal an Act passed by Parliament.

Mr. President : The suggestion is about a word and not about the power ?

The Honourable Dr. B. R. Ambedkar : The President is part of Parliament. There is no difficulty at all.

Mr. President : I will now put the amendment of Shri Brajeshwar Prasad to vote.

[Amendment was negatived. Article 215 was added to the constitution.]

ARTICLE 303

†Mr. President : Article 303. We can now take up the definition article 303.

The Honourable Dr. B. R. Ambedkar : Mr. President, I move :

"That sub-clause *(c)* of clause *(1)* of article 303 be omitted."

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The motion was adopted.

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*CAD, Vol. IX, 16th September 1949, pp. 1581-1582.

† *Ibid.,* p. 1583.

***The Honourable Dr. B. R. Ambedkar :** As regards *(b),* I would just like to make one point. We are proposing to drop from the Constitution two Parts which we had originally proposed in which certain communities had been enumerated as Scheduled Castes and certain communities as Scheduled Tribes. We thought that was cumbering the Constitution too much and that this could be left to be done by the President by order. That is our present proposal. It seems to me that, in that event, it will be necessary to transfer the definition clauses of the Scheduled Castes and the Scheduled Tribes to some other part of the Constitution and make provision for them in a specific article itself, saying that the President shall define who are the Scheduled Castes and who are the Scheduled Tribes. Now it seems to me that the question has been raised with regard to article 296 and 299 which have been held over. It may be that the definition of 'Anglo-Indian' and 'Indian Christian' which is referred to in *(b)* and *(c)* may have to be reconsidered along with that proposition. I request you to hold them over for the present.

Shri V. I. Muniswami Pillai (Madras : General) : The whole thing regarding the Scheduled Castes, etc. may be held over.

Mr. President : I take it that the House agrees to hold over the consideration of items *(b)* and *(c).*

[Sub-clauses *(b)* and *(c)* were held over.]

Mr. President : There are no amendments to item *(d).*

The question is :

"That sub-clause *(d)* be adopted."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That sub-clause *(e)* of clause *(1)* of article 303 be deleted."

Mr. President : There is no Chief Judge now. There used to be subordinate High Courts which were called Chief Courts and they used to have Chief Judges.

* * * * *

The amendment was adopted.

Sub-clause *(e)* of clause *(1)* was deleted from article 303.

(Amendment No. 3219 was not moved.)

Mr. President : Then *(f).* There is no amendment to this. The question is :

"That sub-clause *(f)* of clause *(1)* stand part of article 303."

The motion was adopted.

*CAD, Vol. IX, 16th September 1949, pp. 1583.-1584.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for sub-clauses *(g)* of clause *(1)* of article 303 the following sub-clause be substituted, namely :—

'*(g)* 'corresponding Province', 'corresponding Indian State' or 'corresponding State' means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;' "

We have only included Indian States.

Shri H. V. Kamath : Are we still going to retain the distinction between 'State' and 'Indian State'?

The Honourable Dr. B. R. Ambedkar : The distinction in this : A State now means a constituent part of the Union. An Indian State means a State which is outside the Union but under the paramountey or control of the Union.

Shri R. K. Sidhva : Is the Cutch State which is now administered by the Centre an 'Indian State'? So also Bhopal?

The Honourable Dr. B. R. Ambedkar : An Indian State is defined at a later stage.

Mr. President : There is a definition of an Indian State given later on in amendment No. 140.

Shri T. T. Krishnamachari : There seems to be some confusion in the minds of Members. The terms "corresponding province" and "corresponding Indian State" these are terms pertaining to the period before the commencement of the Constitution. The term "corresponding State" comes into existence after the commencement of the Constitution. The difference between the two is only this. I hope there will now be no confusion on this matter.

[Amendment of Dr. Ambedkar was adopted. Sub-clause (g), of clause (1), as amended was added to article 303.]

Mr. President : Then *(h).* There is no amendment to this.

[Sub-clause (h) of clause (1) was added to article 303.]

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in sub-clause *(i)* of clause *(1)* of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

Such Acts as the Merchant Shipping Act might have to be retained until Parliament otherwise provides.

Shri H. V. Kamath : With regard to this *(i),* there is evidently a slight lacuna. It speaks of laws and bye-laws. But only 'rule' is mentioned. Why not 'bye-rule' as well ?

The Honourable Shri K. Santhanam : I have got an amendment to this...

The Honourable Dr. B. R. Ambedkar : Whether a law is in force or not would depend upon various considerations. First of all, the merger itself may have provided that certain laws shall not be in operation. It may

*CAD, Vol. IX, 16th September 1949, p. 1585-1586.

be that the Bombay Government after that territory has been merged, may retain the laws for that particular territory known as Baroda, or its own legislation might abrogate it. Therefore any existing law means the law that is in force at the date of commencement of the Constitution.

The Honourable Shri K. Santhanam : I do not press my amendment.

[Above amendment of Dr. Ambedkar was adopted. Sub-clause (i) of clause (1), as amended, was added to article 303.]

Mr. President : Then *(j)*. There is no amendment to this. The question ist :

"That sub-clause *(j)* of clause *(1),* stand part of article 303."

(The motion was adopted)

Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after sub-clause *(j)* of clause *(1)* of article 303, the following sub-clause be inserted : —

'*(jj)*' 'foreign State' means any State other than India but does not include a State notified in this behalf by the President.' "

The Honourable Shri K. Santhanam : Would Dr. Ambedkar kindly explain what is meant by the latter portion of this sub-clause *(jj)*? Will he give an illustration of that ?

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, the position is this : If one were to stop with the word "India", it means what a Foreign State ordinarily means. Every State is foreign to another State. That is quite clear from the first part of the definition. Therefore, there can be no quarrel with that part of the definition. In fact that definition may not be necessary even, but in view of the fact that we have used the words "Foreign State" in some part of our Constitution and in view of the fact that it may be necessary for certain purposes to declare that a Foreign State, although it is a Foreign State in the terminological sense of the word, is not a Foreign State for certain purposes, it is necessary to have this definition and to give the power to the President to declare that for certain purposes a State of that kind will not be a Foreign State. The case of Malaya, I understand, is very much in point. Therefore, it really means that for certain purposes the President may declare that although a State is a Foreign State in the sense that it is outside India, for certain purposes will not be treated as a Foreign State. It is for that purpose that this definition is sought to be introduced.

The Honourable Shri K. Santhanam : This sub-clause does not authorize the President to notify for certain purposes. It gives a definition.

The Honourable Dr. B. R. Ambedkar : That will, of course be remembered duly by the President when he issues the notification.

[The amendment of Dr. Ambedkar as shown above was adopted.]

*CAD, Vol. IX, 16th September 1949, p. 1586.

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SECTION SEVEN

17th September 1949 to 16th November 1949.

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ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

***Mr. President :** The first item is the Bill. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Mr. President, Sir, I move :

> "That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions introduced on the 14th September 1949, be taken into consideration by the Assembly."

I would like to say just one or two words and inform the House as to why this Bill has become a necessity and what the Bill proposed to do in substance. The necessity for the Bill arises because of two circumstances. One is the provision contained in clause *(3)* of the proposed Article 308. This article 308 is to be found in the midst of what are called transitional provisions. Clause *(3)* of article 308 provides that :

> "On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India, including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative, shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to and disposed of, by the Supreme Court,"

which means that on the date on which the Constitution comes into operation, the jurisdiction of the Privy Council will completely vanish.

The second circumstance which has necessitated the Bill is that it is proposed that this Constitution should come into operation sometime about the 26th January 1950. The effect of these two circumstances is that the Privy Council will have no jurisdiction to entertain any appeal or petition after the 26th January 1950, assuming that that becomes the date of the commencement of the Constitution. But what is more important is this that the Privy Council will not even have jurisdiction to deal with and

*CAD, Vol. IX, 17th September 1949, pp. 1589-1590.

dispose of appeals and petitions which may be pending before it on the 26th January, 1950. Now taking stock of the situation as it will be on the 26th January 1950 the position is this. There are at present seventy civil appeals and ten criminal appeals pending before the Privy Council. The Calendar of cases which is prepared for the next sitting of the Privy Council has set down twenty appeals for hearing and disposal. It is also a fact that that is probably the only sitting which the Privy Council will hold for the purposes of disposing of the Indian appeals before the date on which the Constitution comes into operation.

According to the information which we have, this list of cases which is prepared for hearing at the next session of the Privy Council contains about twenty appeals, which means that on the 26th January, 1950, sixty appeals will remain pending undisposed of; and the question really that we are called upon to consider is this. What is to be done with regard to these sixty appeals which are likely to remain pending before the Privy Council on the 26th January, 1950?

There are, of course, two ways of dealing with this matter. One way was to continue the jurisdiction of the Privy Council and dispose of all the appeals that are now pending before it. That was the procedure that was adopted in the Irish Constitution by article 37 whereby it was stated that nothing in their Constitution would affect the jurisdiction of the Privy Council to deal with matters that may be pending before them on the date of the Constitution. But as I pointed out, in the proposed article 308 clause (3), we do not propose to leave any jurisdiction to the Privy Council. We propose to terminate the jurisdiction of the Privy Council on the 26th January, 1950. The only way out, therefore, is to provide that the jurisdiction of the Privy Council shall terminate, that their jurisdiction shall be conferred on the Federal Court and that they shall transfer all the cases which are pending before them on the 10th October, except the twenty cases to which I made a reference earlier to the jurisdiction of the Federal Court. This is what the Bill does.

Now, Sir, coming to the specific provisions of the Bill, it will be noticed that clause 2 abolishes the jurisdiction of the Privy Council over all courts in the territory of India. Clause 3 abolishes the jurisdiction of the Privy Council over the Federal Court, and clause 5 is the converse of clauses 2 and 3, because it proposes to confer the Privy Council jurisdiction on the Federal Court. Clause 4 deals with the matters that are pending before the Privy Council. Although clause 5 confers the Privy Council's jurisdiction on the Federal Court, clause 4 is a saving clause and saves the jurisdiction of the Privy Council in certain appeals and petitions which are

pending before it. They may be classified under four heads : (1) Appeals and petitions in which judgement has been delivered, but Order in Council has not been made before the 10th October, (2) appeals entered in the Cause List for Michaelmas sitting which begins on the 12th October, (3) petitions which are already lodged and may be lodged before the 10th October, and (4) appeals and petitions on which judgement has been reserved by the Privy Council although the hearing has been completed. In clause 6, all those matters which do not come under clause 4 stand automatically transferred to the Federal Court even though they may be pending before the Privy Council. Clauses 7 and 8 are mere matters of construction.

While curtailing the jurisdiction of Privy Council, it is felt that it is desirable to repeal and amend certain sections of the Government of India Act, 1935 which are necessary as a matter of consequence and which are also necessary to remove some of the anomalies in the Government of India Act with regard to the jurisdiction and powers of the Federal Court. As I have said, clause 3 repeals Sections 208 and 218 of the Government of India Act which deal with the Privy Council and appeals from the Federal Court, and appeals from a court outside India. Both these changes are consequential.

It is proposed to amend Section 205 which deals with the appellate jurisdiction of the Federal Court, and Section 209 which deals with the form of judgement and the drawing up of decrees, 210 which deals with jurisdiction of the Federal Court over other courts and Section 214 which deals with jurisdiction of the Federal Court over courts outside India.

It is proposed, therefore, by these consequential and other necessary amendments to make the jurisdiction of the Federal Court complete and independent. This measure, undoubtedly, is an interim measure, because these powers will last only upto the 26th January 1950 when the Constitution comes into operation. On the 26th January 1950, the powers of the Federal Court will be those that are set out in the Constitution.

Sir, I move.

* * * * *

Clause 2

***The Honourable Dr. B. R. Ambedkar :** Sir, it is contained in clause 3 if my friend will read it. 'Federal Court' is provided for in sub-clause *(2)* of clause 3. That is why the words "(other than the Federal Court)" are there in clause 2.

*CAD, Vol. IX, 17th September 1949, p. 1597.

Pandit Thakur Das Bhargava : In this list it is in clause 2 and my amendment applies to it only.

Mr. President : You can leave it out for the present.

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment. It is quite unnecessary.

Shri B. Das (Orissa : General) : I beg to move :

"That is sub-clause *(1)* of Clause 2, the words 'or otherwise' be deleted."

Sir, it is very humiliating to me...

***The Honourable Dr. B. R. Ambedkar :** Sir, I do not think this amendment is very necessary, because the jurisdiction of the Privy Council may be derived also from the prerogative conferred by Statute. Therefore the words 'or otherwise' are quite necessary. We want to put an end completely to the jurisdiction not merely arising from the prerogative but from other sources also.

Mr. President : I will now put the amendments to vote.

[All amendments were rejected, clause 2 was added to the Bill.]

* * * * *

Clause 3

†Shri T. T. Krishnamachari (Madras : General) **:** My friend's remarks can be cut short if I explain there are really no appeals pending before the Privy Council from the Federal Court.

The Honourable Dr. B. R. Ambedkar : There is no pending appeal.

Pandit Thakur Das Bhargava : I heard from Dr. Ambedkar and Dr. Bakhshi Tek Chand that there is no appeal pending, but there may be other proceedings. My submission is that if there are proceedings whereby remedy is possible to be given the persons concerned should not be deprived of their rights, merely because we are doing away with the jurisdiction of the Privy Council.

* * * * *

‡The Honourable Dr. B. R. Ambedkar : I do not think it is necessary to accept the amendment moved by my Friend. Pandit Thakur Das Bhargava. As my Friend, Mr. Krishnamachari, has stated, there are really no appeals pending before the Privy Council from the Federal Court, and consequently it is quite unnecessary to make any saving as proposed by my Friend, Pandit Thakur Das Bhargava, because nobody is really adversely affected, there being no pending cases.

*CAD, Vol. IX, 17th September 1949, p. 1597.

†*Ibid.,* p. 1598.

‡ *Ibid.,* p. 1599.

With regard to the amendment moved by my Friend, Mr. Naziruddin Ahmad, I cannot understand why we should depart from the principle which has been laid down that any criminal matter which is lodged before the Privy Council before the appointed day may be heard by them for purposes of admission but they would be returned to the Federal Court for final disposal. He wants to make a departure from it but I have not been able to see that the reasons he has advanced warrant it. Therefore I cannot accept his amendment.

[Amendment of Pandit Thakur Das Bhargava was rejected and that of Naziruddin Ahmed was withdrawn. Clause 3 was added to the Bill.]

* * * * *

Clause 4

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****The Honourable Dr. B. R. Ambedkar :*** Sir, I move :

"That for sub-clause *(b)* of clause 4, the following sub-clauses be substituted : —

(b) any Indian appeal or petition on which the Judicial Committee has, after healing the parties, reserved judgment or order; or

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or;

and sub-clause *(c)* be re-lettered as sub-clause *(d)."*

What probably requires some explanation is sub-clause *(c).* Although we have stated in the main clause that business or cases entered upon the calendar for the Michaelmas term may be left with the Privy Council for disposal, it is not quite certain how many of them may remain undisposed of. Therefore, we propose to give permission to the Privy Council at the outset to say that, although a matter or a case is entered upon the cause list for the Michaelmas term, they will not be able to hear some of the matters, so that there may be no balance of pending cases left. In that event, those cases which the Privy Council directs that they will not be able to hear would also become automatically transferred to the Federal Court. It is to provide for that sort of contingency that I am adding this sub-clause *(c)* in terms of the amendment.

Pandit Thakur Das Bhargava : Sir, I move :

"That sub-clause *(c)* of clause 4 be deleted."

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*CAD, Vol. IX, 17th September 1949, pp. 1599-1600.

...The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment of Pandit Thakur Das Bhargava.

[Amendment of Pandit Bhargava was rejected. Dr. Ambedkar's amendment was adopted. Clause 4 was added to the bill.]

* * * * *

Clause 5

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****The Honourable Dr. B. R. Ambedkar :*** Sir, I move :

"That in sub-clause *(3)* of Clause 5, for the brackets, letters and word *'(b)* or *(c),* the brackets, letters and word *'(b), (c)* or *(d)'* be substituted."

It is purely consequential.

[The amendment was adopted and clause 5, was added to the bill.]

* * * * *

Clause 7

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†Mr. Naziruddin Ahmad : Sir, I beg to move :

"That is Clause 7, the comma after the word 'effect' be deleted."...

Mr. President : I do not think this need be put to vote, this question of 'comma'.

The Honourable Dr. B. R. Ambedkar : This will be looked into. This need not be put to vote.

[Clause 7 was added to the Bill.]

Clause 8

* * * * *

‡The Honourable Dr. B. R. Ambedkar : I do not accept the amendment**.**

[The amendment of Mr. B. Das was negatived. Clause 8 was added to the Bill.]

Clause 9

#The Honourable Dr. B. R. Ambedkar : Sir, with your permission, I would like to move the amendment which have been put in a somewhat different form because I thought that the amendments as tabled rather create a confusion. If you will allow me, I have put all these in a consolidated form. There is no substantial change at all. It is just a matter of form and I thought that the House would be in a better position to get at the idea of what we are doing in clause 9.

*CAD, Vol. IX, 17th September 1949, pp. 1601.

† *Ibid.,* p. 1602.

‡ *Ibid.,* p. 1604.

Ibid., pp. 1604-1605.

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

For clause 9, the following clause be substituted : —

"9. *(1)* In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section *(2)* the following sub-section shall be substituted, namely:— Amendments of the Government of India Act, 1935.

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question us aforesaid has been wrongly decided and, with the leave of the Federal Court, on any other ground."

(2) In section 209 of the said Act, for sub-sections *(1)* and *(2)* the following sub-sections shall be substituted, namely : —

"(1) The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India"." Act V of 1908

I should like to add one or two words to be interpolated, which have been omitted :

"In the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court."

"*(3)* In clause *(a)* of sub-section (3) of Section 210 of the said Act, for the word, brackets and figure "sub-section *(2)",* the word, brackets and figure "sub-section *(1)"* shall be substituted."

"(4) In section 214 of the said Act, after sub-section *(1)* the following sub-section shall be inserted, namely : —"

I should like to add a few words at the beginning.

"*(IA)* Subject to the provisions of the Code of Civil Procedure, 1908, or any law made by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced." Act V of 1908.

The object of clause 9 is to make the Federal Court a complete and independent Court. There were certain limitations under the existing Government of India Act, 1935 which prevented the Federal Court from drawing up its own decrees. It had to send the matter to the Trial Court. All these limitations it is necessary to withdraw because the Federal Court is going to take the place of the Privy Council.

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***The Honourable Dr. B. R. Ambedkar :** That amendment, I submit, is outside the scope of the Bill. The Bill deals merely with the transfer of jurisdiction.

*CAD, Vol. IX, 17th September 1949, pp. 1605-1606.

Pandit Thakur Das Bhargava : It is not a question of transfer of jurisdiction. I only give what is contained in clause 5 and am defining what jurisdiction shall be conferred, not leaving it to investigation as to what the prerogative of His Majesty was, I am only making these powers in a concrete form from what it is in the abstract...

The Honourable Dr. B. R. Ambedkar : This Bill does not propose to give any direction to the Federal Court as to the manner in which they should exercise the jurisdiction with which they become vested under the present Bill.

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Clause 11

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***The Honourable Dr. B. R. Ambedkar :** Sir, I do not accept that amendment, it is quite unnecessary.

[The amendment of Mr. Naziruddin Ahmad was negatived.]

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Clause 1

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†Mr. President : Do you wish to say anything about this ?

The Honourable Dr. B. R. Ambedkar : The emphasis is on the abolition of the jurisdiction of the Privy Council, and obviously that emphasis could not be realised if the words "abolition of jurisdiction" were put in brackets.

Mr. President : Do you wish to say anything about the 7th amendment ?

The Honourable Dr. B. R. Ambedkar : Sir, the acceding States were never subject to the jurisdiction of the Privy Council. But as a measure of extreme caution, it will be seen that in sub-clause *(2)* the words used are "within the territory of India". Therefore, it is unnecessary to make any mention of the acceding States.

Mr. President : I shall now put the amendments to vote.

[All amendments were rejected. Clause 1 was added to the Bill.]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the Bill, as amended, be passed".

[The motion was adopted.]

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*CAD, Vol. IX, 17th September 1949, p. 1612.

†*Ibid.,* p. 1613.

ARTICLE 303—*(contd.)*

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***The Honourable Dr. B. R. Ambedkar :** I move :

"That after sub-clause *(1)* of clause *(1)* of article 303, the following sub-clauses be inserted, namely :—

(II) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(i) any court in the territory of India constituted or re-constituted under this Constitution as a High Court and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) "Indian State" means—

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.' "

Mr. President : There is no amendment to this. As no one wishes to speak on this I will put it to vote.

[The motion was adopted.]

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†The Honourable Dr. B. R. Ambedkar : I beg to move :

"That after sub-clause *(n)* of clause *(1)* of article 303, the following sub-clause be inserted, namely : —

"(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the lime being is recognised by the President as the Ruler of the State and includes any person for the time being recognised by the President as exercising the powers of the Ruler of the State, and in relation to an Indian State means the Prime, Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State'."

* * * * *

Mr. President : There is no amendment to this. I will put it to vote.

[The amendment was adopted.]

‡The Honourable Dr. B. R. Ambedkar : Sir, I move :

*CAD, Vol. IX, 17th September 1949, p. 1633.

† *Ibid.,* p. 1633.

‡ *Ibid.,* pp. 1636-1637.

"That with reference to amendment No. 147 of List IV (Eighth Week), for sub-clause *(w)* of clause *(1)* of article 303, the following sub-clause be substituted : —

'(w) 'Scheduled Castes' means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 300A of this Constitution to be Scheduled Castes for the purposes of this Constitution.' "

The only change is, the word 'specified' has been changed to 'deemed', Sir, I move :

"That with reference to amendment No. 148 of list IV (Eighth Week), for sub-clause *(x)* of clause *(1)* of article 303, the following sub-clause be substituted : —

'(x) 'Scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300B of this Constitution to be scheduled tribes for the purposes of this Constitution;"

I am incorporating the other amendment which has also been tabled. Shall we take up, the two other articles also at the same time ?

Mr. President : Yes.

NEW ARTICLE 300A AND 300B

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 300, the following articles be inserted : —

Scheduled Castes.

300A. *(1)* The President may, after consultation with the Governor or Ruler of a State, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause *(1)* of this article any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Scheduled Tribes.

300B. *(1)* The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for purposes of this Constitution be deemed to be scheduled tribes in relation to that State.

(2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued by the President under clause *(1)* of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The object of these two articles, as I stated, was to eliminate the neccessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that

the President, in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and Tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this : that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President.

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***Mr. President :** Does anyone else wish to speak ? Do you wish to say anything Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment of Pandit Thakur Das Bhargava.

Mr. President : Then I put the amendments

[Both the above amendments of Dr. Ambedkar were adopted. Following amendment of Pandit Bhargava was negatived.]

* * * * *

"That in amendment No. 201 of list V (Eighth Week), in clause *(2)* of the proposed new article 300A, the following be added at the end : —

'for a period of ten years from the commencement of this Constitution.'"

* * * * *

†Mr. President : Then I put Mr. Krishnamachari's amendment which has really been accepted by Dr. Ambedkar—218A. The question is :

"That in amendment No. 201 of List V (Eighth Week), in the proposed new article 300B—

(a) in clause *(1),* for the word 'communities' in the two places where it occurs, the words 'tribal communities' be substituted;

(b) in clause *(2)* for the word 'community', in the two places where it occurs, the words 'tribal community' be substituted."

(The amendment was adopted.)

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*CAD, Vol. IX, 17th September 1949, p. 1639.

†*Ibid.,* p. 1640.

Mr. President : Then I put article 300B as proposed by Dr. Ambedkar.

(Article 300B was adopted and added to the Constitution)

EIGHTH SCHEDULE

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That the Eighth Schedule be deleted."

Mr. President : There are certain amendments to the Eighth Schedule. They would not arise now.

The Honourable Dr. B. R. Ambedkar : No. Sir, they would not arise.

(Schedule Eight was deleted from the Constitution).

ARTICLE 303—*(contd.)*

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause *(2)* of article 303, the following words be added at the end : —

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

The reference is to the General Clauses Act.

Shri Jaspat Roy Kapoor : I wonder whether there is any real necessity for making this. Even if it is, I do not know how far it would be correct if you have it like this "as it applies for the interpretation of an Act of the Legislature of the Dominion of India". Because, hereafter when the Constitution has come into force, there shall be no law which has been made by 'the Legislature of the Dominion of India'. The Dominion of India will cease then and all the Acts in force within the Dominion of India will automatically become Acts of the Union.

The Honourable Dr. B. R. Ambedkar : The point is this that the General Clauses Act applies to Acts, Regulations and Ordinances. It is therefore necessary to say to which class of these laws this will apply. That is the reason why this amendment is proposed.

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Shri Jaspat Roy Kapoor : What I mean to submit is that after the Constitution comes into force there shall be no law in existence which could be said to be a law of the ' Dominion of India'. So I think our purpose would be fully served if we say " as it applies for the interpretation of any existing Act."

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*CAD, Vol. IX, 17th September 1949, p. 1640.

†*Ibid.,* p. 1641.

The Honourable Dr. B. R. Ambedkar : I am afraid you have not examined the General Clauses Act.

Shri Jaspat Roy Kapoor : It is no use introducing some provision without carefully scrutinising it.

The Honourable Dr. B. R. Ambedkar : It had better be left to the draftsmen as to what is necessary and what is not.

Shri Jaspat Roy Kapoor : I agree that any necessary corrections should be left to the Drafting Committee. But there is no harm in submitting a mistake if it is a mistake.

The Honourable Dr. B. R. Ambedkar : I refuse to accept, it is a mistake.

Shri Jaspat Roy Kapoor : I know it is not easy to convince you.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, I have said what I had to say and after having seen the General Clauses Act right here, I am quite convinced that the amendment I have moved is a very necessary amendment.

Mr. President : The question is :

"That in clause *(2)* of article 303, the following words be added at the end :—

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

(The amendment was adopted)

Mr. President : Then clause *(3)*. There is amendment No. 156.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause *(3)* of article 303—

(i) after the word and figure ' Part I' the words and Figures ' or Part III' be inserted.

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the words 'to an Ordinance made by a Governor or Ruler, as the case may be' be substituted."

It is purely consequential.

The amendment was adopted.

[Article 303, as amended, was added to the Constitution.]

* * * * *

ARTICLE 304

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 304, the following be substituted :—

*CAD, Vol. IX, 17th September 1949, pp. 1641-1642.

†*Ibid.,* p. 1643.

'304. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill:

Procedure for amendment of the Constitution.

Provided that if such amendment seeks to make any change in—

(a) any of the Lists in the Seventh Schedule, or

(b) the representation of States in Parliament, or

(c) Chapter IV of Part V, Chapter VII of Part VI, and article 213A of this Constitution,

the amendment shall also require to be ratified by the Legislatures of not less than one half of the States for the time being specified in Parts I and III of the First Schedule.'"

I will move my other amendment also, No. 207. I move:

"That in amendment No. 118 of List III (English Week), for the proviso to the proposed article 304 the following proviso be substituted :—

'Provided that if such amendment seeks to make any change in—

(a) article 43, article 44, article 60, article 142 or article 213A of this Constitution, or

(b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.'"

Sir, I do not wish to say anything at this stage because I anticipate that there would be considerable debate on this article and I propose to reserve my remarks towards the end so that I may be in a position to explain the points that might be raised against this amendment.

Mr. Naziruddin Ahmad : It is far better to give the arguments in advance to avoid any unnecessary debate.

The Honourable Dr. B. R. Ambedkar: If my friend will guarantee to me that he will not take time, I will do it, but I know my friend will have his cake and eat it too.

Mr. Naziruddin Ahmad : Sir, Dr. Ambedkar will give no argument at the beginning, saying that he will await arguments and speak in reply. But in the end on hearing arguments, he will merely say "I oppose the amendments and reject the arguments"!

Mr. President : We shall take up the amendments. No. 119.

Shri T. T. Krishnamachari : Sir, I am not moving amendment No. 119 because it is incorporated in Dr. Ambedkar's amendment. It is covered by No. 207.

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***The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, of the many amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker. But I am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304.

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution. I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; nonetheless the Canadian people have not thought fit to employ to powers that have been given to them to introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to the people in a referendum and approved by the people by a majority.

*CAD, Vol. IX, 17th September 1949, pp. 1659-1663.

Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied: one is that the majority of the cantons accept the amendment, and secondly—there is a referendum also—in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this : That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has to be submitted to a referendum of the people or the electors. A further condition is this: that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority.

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution ? We propose to divide the various articles of the Constitution into three categories. In one category, we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States in concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chamber or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213 which deals with the States in Part II. With regard to the constitution of the States, the draft Constitution also leaves the making of

constitution of States in Part II and their modification to Parliament to be decided by a simple majority.

Again take Schedule V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution, such as article 255, which deals with grants and financial provisions which leave the matter subject to law made by Parliament. The provisions are 'until Parliament otherwise provides'. Therefore in many matters—I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point—we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extenstive powers of amending or altering the Constitution by a simple majority had suggested to me a concrete case and referred to any definite article that that should also be put in that category, it would have been open to the Drafting Committee to consider the matter. Instead of that, to say that the whole of the Constitution should be left liable to be amended by Parliament by majority is, in my judgement, too extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the constitution which could not be amended by Parliament by a simple majority. As I said, we have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority.

Now, what is it we do ? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

Mr. President: Of Members present.

The Honourable Dr. B. R. Ambedkar : Yes. Now, we have no doubt put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure. If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they

refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We have distributed legislative authority; we have distributed executive authority and we have distributed administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other powers, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the provinces or the States to have any voice, is in my judgement altogether nullifying the fundamentals of the Constitution. If my honourable Friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43 deals with the election of the President; article 44 deals with the manner of election of the President. It was the view of the Drafting Committee that the President, while no doubt in charge of the affairs of the Centre, none the less was the head of the Union, and as such, the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60 and article 142. Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-extensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending the executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142 and we therefore thought that that also was a fundamental matter and ought to require the ratifications of the States.

Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that the Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested, and it was therefore a matter which ought not to be left to be

decided merely by a two-thirds majority. The same about the High Courts, mentioned in Chapter VII of Part VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and *(a)* deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in the sight of those who think that the Constitution should be liable, should be open to be amended every article of that—by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be free to take any decision; and the Supreme Court may be free to give any interpretation of the law. It would result in utter chaos. Sir I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position. If that is the thing....*

Shri Mahavir Tyagi : It is not so.

The Honourable Dr. B. R. Ambedkar : It may not be so. If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure and I have no objection to it at all.

*Dots indicate interruption.

If that is not the ground on which the argument rests, then the other ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modern constitution can proceed only on two bases : One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial, responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as, if not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged—I was not able to hear every Member who spoke—is that this Assembly is not a representative assembly as it has not been elected on adult suffrage, that the large mass of the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitution should have the finality which article 304 proposes to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage. I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I utterly repudiate.

Mr. Naziruddin Ahmad : It would have been worse !

The Honourable Dr. B. R. Ambedkar : It might easily have been worse, says my Friend Mr. Naziruddin Ahmad, and I agree with him. Power and knowledge do not go together. Often times they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

Mr. President: I shall now put the amendments to vote.

[The amendments were negatived and those of Dr. Ambedkar, as mentioned earlier were adopted. Article 304, as amended, was added to the Constitution.]

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***Shri Brajeshwar Prasad :** Sir, now the time is seven o'clock.

Seth Govind Das : There is so much still to be done that I do not think that we shall be able to finish It. So, I propose that either we should sit at nine o'clock tonight and go on till twelve o'clock or we may sit tomorrow morning.

The Honourable Dr. B. R. Ambedkar: We have got only three articles.

Shri T. T. Krishnamachari: We have only three articles, two of which are of a formal nature.

Mr. President: I think it would be very inconvenient to adjourn now and come back again to the House. So we have to sit until we finish or we have to sit tomorrow.

The Honourable Dr. B. R. Ambedkar : We have got two or three articles and I am sure they are non-contentious and it would not take even half an hour.

Seth Govind Das : I do not think we can finish in one hour. There is the question of the name of the country in article I to be settled. I do not think we shall be able to finish all these.

Mr. President: The majority of the House seems to think that we shall continue. Am I correct ?

Many Honourable Members : Yes, Sir.

The Honourable Dr. B. R. Ambedkar : We can finish the thing.

Mr. Naziruddin Ahmad : It cannot be done. There is article 1 and unless the sweets are arranged by Dr. Ambedkar, the *namkaranam* ceremony cannot be done today.

ARTICLE 99

Mr. President: Then we shall take articles 99 and 184.

†The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That for article 99, the following article be substituted :—

'99. *(1)* Notwithstanding anything contained in Part XIVA of this constitution but subject to the provisions of article 301-F thereof, business in Parliament shall be translated in Hindi or in English.

Language to be used in Parliament.

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in the mother tongue.

*CAD, Vol. IX, 17th September 1949, p. 1665.

†*Ibid.,* p. 1666.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.'"

May I move the other one also. This is an analogous thing.

Mr. President: I suppose the argument will be the same in respect of both.

The Honourable Dr. B. R. Ambedkar: They are substantially the same.

Mr. President: I shall put them separately to vote.

The Honourable Dr. B. R. Ambedkar : We can have one discussion. So far as the discussion is concerned, the argument will be more or less the same. Sir, I move :

'That for article 184, the following article be substituted :—

'184. *(1)* Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301-F thereof, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English.

Language to be used in the legislatures of States

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother tongue.

(2) Unless the Legislature of the State otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom'."

Sir, I think no observations are necessary. The articles are very clear in themselves.

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***Mr. Nazaruddin Ahmad :** ...If you do not allow the regional languages also to develop, their contribution towards the development of the official language will be very small.

Mr. President: Is that not given in the amendment as proposed now ?

Mr. Naziruddin Ahmad: I shall ask the Drafting Committee to consider that. This is only a suggestion; it should fit in somehow. I know this is only a pious sentiment on my part because it is not going to be accepted.

Pandit Lakshmi Kanta Maitra : Are you going to allow discussion on the language question ? The whole language question is coming before the House.

The Honourable Dr. B. R. Ambedkar : No, No. The whole question has been discussed and decided.

*CAD, Vol. IX, 17th September 1949, p. 1667.

[Amendments of Dr. Ambedkar mentioned above were adopted Articles 99 and 184, as amended were added to the Constitution.]

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ARTICLE 1

***Mr. President:** There is one more article, article 1.

The Honourable Dr. B. R. Ambedkar : Sir, I propose to move amendment No. 130 and incorporate in it my amendment No. 197 which makes a little verbal change in sub-clause *(2)*.

Sir, I move:

"That for clauses *(1)* and *(2)* of article 1, the following clauses be substituted :—

"(*1*) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts I, II and III of the First Schedule.'"

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†**Mr. President:** If I adjourn at all, it will be for the next session. It will be best to adjourn till the next session.

The Honourable Dr. B. R. Ambedkar : Sir, this can be finished in a short time.

Mr. President: What can we do ? It is open to any Member to obstruct. Eighty six Members are present and under our rules one-third of the total number of Members should constitute the quorum, and that is about 97. So now, there is no quorum. I have to adjourn the House, there is no help.

An Honourable Member : Let this article go to the next session.

Another Honourable Member : We can meet tomorrow.

Another Honourable Member: There is no guarantee of quorum even tomorrow.

The Honourable Dr. B. R. Ambedkar : We can bring some Members who may be outside. The bell may be rung.

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‡**Shri H. V. Kamath :** ...Some ascribe it (name of Bharat) to the son of Dushyant and Shakuntala who was also known as "Sarvadamana" or all conqueror and who established his suzerainty and kingdom in this ancient land. After him this land came to be known as Bharat. Another school of research scholars hold that Bharat dates back to Vedic...

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*CAD, Vol. IX, 17th September 1949, p. 1669. .

†*Ibid., p.* 1670.

‡*Ibid.,* 18th September 1949, p. 1674

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Is it necessary to trace all this ? I do not understand the purpose of it. It may be well interesting in some other place. My friend accepts the word "Bharat". The only thing is that he has got an alternative. I am very sorry but there ought to be some sense of proportion, in view of the limited time before the House.

Shri H. V. Kamath : I hope it is not for Dr. Ambedkar to regulate the business of the House.

Mr. President: What amendment are you moving ?

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***Mr. President:** You can move one. I permitted you to move both of them, but I find that the two amendments are contradictory.

Shri H. V. Kamath: Are they contradictory, Sir ? If you say they are contradictory, I have nothing to say.

Mr. President: Yes, if one is accepted, the other is ruled out.

Shri H. V. Kamath : My object is that if one is not accepted, the other may be accepted.

The Honourable Dr. B. R. Ambedkar: Why all this eloquence over it ?

Shri Shankarrao Deo (Bombay : General)**:** There should be no arguing with the Chair.

Shri H. V. Kamath : I know the rules, Mr. Shankarrao Deo.

Mr. President: You can move one.

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†The Honourable Dr. B. R. Ambedkar: It is proposed to alter the clause in article 3 dealing with the reorganisation of the provinces and States. States in both Parts I and III will be brought on the same level. There is an amendment to the article and that difference is going to be eliminated and it will disappear.

Shri B. M. Gupte: That is alright but as I was saying I am not against making the Centre strong. But at the same time we have given a glorified name to the units. We are taking away the powers of the States and bringing them in the Central or Concurrent list; and yet we have adopted the word State for the unit....

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*CAD, Vol. IX, 18th September 1949, p. 1675.

†*Ibid.,* p. 1685.

***The Honourable Dr. B. R. Ambedkar :** Sir, this matter was debated at great length last time. When this article came before the House, it was kept back practically at the end of a very long debate because at that time it was not possible to come to a decision as to whether the word "Bharat" should be used after the word "India" or some other word, but the whole of the article including the term "Union"—if I remember correctly— was debated at great length. We are merely now discussing whether the word "Bharat" should come after "India". The rest of the substantive part of the article has been debated at great length.

Shri B. M. Gupte : I do not say that we should go back upon what we have done. I am merely pointing out the implications and the result of all this....

†Shri Kamalapati Tripathi: ...When we pronounce this word (Bharat) we are reminded of Shankaracharya, who gave a new vision to the world. When we pronounce this word, we are reminded of the mighty arms of Bhagwan Rama which by twanging the chord of the bow sent echoes through the Himalayas, the seas around this land and the heavens. When we pronounce this word, we are reminded of the wheel of Lord Krishna which destroyed the terrible Imperialism of Kshatriyas from India and relieved this land of its burden.

The Honourable Dr. B. R. Ambedkar : Is this all necessary, Sir?

Shri Kamalapati Tripathi: I am just telling you to hear relevant things, Sir.

The Honourable Dr. B. R. Ambedkar : There is a lot of work to be done.

Shri Kamalapati Tripathi: When we pronounces this word we are reminded of Bapu who gave a new message to humanity.

We are pleased to see that this word has been used and we congratulate Dr. Ambedkar on it. It would have been very proper, if he had accepted the amendment moved by Shri Kamath, which states "Bharat as is known in English language 'India'" ... etc.

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*CAD, Vol. IX., 18th September 1949, p. 1686.

†*Ibid.,* p. 1689.

ARTICLE 306

***Mr. President:** We shall now proceed with the consideration of the articles relating to transitory provisions. Article 306.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I Move :

> "That for clauses *(a), (b)* and *(c)* of article 306, the following clauses be substituted :—
>
> "(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or *Kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), coal (including coke and derivatives of coal), iron steel and mica ;
>
> (b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court.'"

The only changes which the amendment seeks to make in the original article 306 are these. From sub-clause *(a),* it is now proposed to omit petroleum and petroleum products and mechanically propelled vehicles. The reason why petroleum and petroleum products are sought to be omitted from sub-clause *(a)* is because that item is now included in List I of the Seventh Schedule. Mechanically propelled vehicles are omitted because they are at present de-controlled and they are placed in the Concurrent List. If the Centre wishes to legislate, it can legislate. Sub-clause *(b)* of the original article, relief and rehabilitation of displaced persons, is no longer necessary because that is also put in the Concurrent List. In regard to sub-clause (c), Inquiries and Statistics is also included in the Concurrent List and therefore this is also omitted. It is only a consequential thing. These are all the changes which this amendment seeks to make in the original article 306.

Mr. President : May I enquire of Dr. Ambedkar ? My impression is that cattle fodder including oil cakes and other concentrates was one of the things, adequate control over which was at one time felt necessary. The Government of India Act was sought to be amended; but it would not be amended at the time and considerable difficulty was being felt. I do not know whether you have considered that.

The Honourable Dr. B. R. Ambedkar : This article was re-drafted in consultation with the Industry and Supply Department. We have put in these matters which they thought were necessary to be controlled by the Centre, for a period of five years. If the House thinks that any particular addition may be made to the items included in sub-cluse (a), I certainly have no objection.

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*CAD, Vol. X, 7th October 1949, pp.3-4.

Mr. President: I speak from my experience which is now rather out of date.

The Honourable Dr. B. R. Ambedkar : I think it is rather desirable to include that item.

Dr. P. S. Deshmukh (C.P. & Berar : General): That may be done in consultation with the Agriculture Department.

Mr. President : That is what I suggest.

The Honourable Dr. B. R. Ambedkar : I think we shall add that. I can put in, foodstuffs including cattle fodder.

Mr. President: Cattle fodder including oil cakes and other concentrates.

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***Mr. President :** Does anyone else wish to speak ? Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, I have only to say this much. I am not able to accept the amendment moved by Shri Brajeshwar Prasad. With regard to the other amendment suggested by yourself and by my Friend Dr. Kunzru, I may say that I have an open mind and I am prepared to introduce the necessary amendments after consultation with the Ministry of Industry and Supply. Therefore my amendment may be put through now.

Mr. President : And the Ministry of Agriculture also. You may consult that Ministry also.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I will consult the Ministries concerned.

Mr. President: Subject to what Dr. Ambedkar has said, I will put the article to vote. I take up the amendments first. Amendment No. 2 of Dr. Deshmukh is more or less verbal and he may leave it to the Drafting Committee also No. 3. What about No. 4 ?

Dr. P. S. **Deshmukh :** I am not moving it.

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[Amendment of Dr. Ambedkar was adopted. Article 306, as amended was added to the constitution.]

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ARTICLE 309

†Mr. President : Then we take up article 309.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Shri Brajeshwar Prasad adding a new article 307 A.

Mr. President : But shall we take it up now ?

The Honourable Dr. B. R. Ambedkar : It may be kept back.

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[Article 309 was adopted and added to the Constitution.]

*CAD, Vol. X, 7th October 1949, p. 6.

†*Ibid.,* p. 7.

ARTICLES 310-A AND 310-B

***Shri T. T. Krishnamachari :** The next article *viz.,* 310 is linked to article 308. These two may be considered together.

Mr. President : Consideration of article 310 is postponed. Then the House will take up consideration of the next articles 310-A and 310-B.

The Honourable Dr. B. R. Ambedkar : Sir, with your permission I move amendment No. 12 in a slightly amended form, thus :

" That after article 310, the following new articles be inserted :—

'310 A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement'.

Provisions as to Comptroller and Auditor-General of India.

310 B. *(1)* The members of the Public Service Commission for the Dominion of India holding Office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (*1*) and (*2*) of article 285 of this Constitution but subject to the proviso to clause (*2*) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

Provisions as to Public Service Commission.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (*1*) and (*2*) of article 285 of this Constitution but subject to the proviso to clause (*2*) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members."

Sir, these articles merely provide for the continuance of certain incumbents of the posts which are regulated by the Constitution such as the members of the Public Service Commission and the Auditor-General.

There is no matter of principle involved in these articles.

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†The Honourable Dr. B. R. Ambedkar : I do not propose to accept the amendment of Dr. Deshmukh. It is unnecessary.

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*CAD, Vol. X, 7th October 1949, p. 8.

†*Ibid.,* p. 9.

Mr. President : I will first put the amendment of Dr. Deshmukh to vote.

The question is :

"That in amendment No. 12 of List I (First Week), in the proposed new article 310-B, after the words 'commencement of this Constitution' wherever they occur, the words 'whose services have not, for any reason, been terminated be inserted."

The amendment was negativated.

Mr. President: I will now put the articles contained in the amendment of Dr. Ambedkar one by one to vote.

[All amendments of Dr. Ambedkar were carried Articles 310-A and 310-B were added to the constitution.]

ARTICLE 311-A

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after article 311, the following new article be inserted :

'311A. *(1)* Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the Provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office.

Provisions as to Provisional President

(2) In the event of the occurrence of any vacancy in the office of the Provisional President by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution, and until a person is so elected, the Chief Justice of India shall act as the Provisional President'."

Mr. President : There are two amendments to this. One is for the deletion of the word "provisional" before the word "President".

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in amendment No. 28 of List II (First Week), in clause *(1)* of the proposed article 311 A the word 'Provisional' be deletedd."

"That in amendment No. 28 of List II (First Week), in clause *(2)* of the proposed article 311 A, for the words 'provisional President' in the first place where they occur, the words 'President so elected by the Constituent Assembly of the Dominion of India', be substituted."

"That in amendment No. 28 of List II (First Week), in clause (*2*) of the proposed article 311 A, for the words 'the provisional President' in the second place where they occur, the word 'President' be substituted."

Dr. P. S. Deshmukh : Since the principle underlying my amendment has been accepted, I do not see any reason for moving my amendment.

Mr. President : The article and the amendments are now open to discussion.

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†Prof. Shibban Lal Saksena : Mr. President, Sir, ...I hope Dr. Ambedkar will see the reasonableness of this suggestion and will omit the

*CAD, Vol. X, 7th October 1949, p. 9.

†*Ibid.,* p. 10.

word "provisional" before the word "Parliament", as he has done in the case of the President.

The Honourable Dr. B. R. Ambedkar: I do not think there can be any great objection to the retention of the words "provisional Parliament". I do not propose to make any change in that. It would not be called the "Provisional Parliament" but for purposes of the language of this article I think it is necessary to say that it is the Provisional Parliament.

Shri R. K. Sidhva: But I thought that Dr. Ambedkar has agreed to omit the word "Provisional".

Mr. President: No, this is with reference to the Parliament. Mr. Shibhan Lal Saksena wanted that the word "Provisional" should be omitted before the word "Parliament".

Dr. P.S. Deshmukh: If that is so, I would like to move my amendment for the deletion of the word "Provisional" in the other place also.

Mr. President : Does your amendment refer to Parliament also ?

Dr. P. S. Deshmukh : Yes, Sir.

Mr. President : Mr. Shibhan Lal Saksena has moved it. That will be put to the vote. I will now put the various amendments to vote. The question is :

"That in amendment No. 23 of List II (First Week), in clause (*1*) of the proposed article 311-A the word 'provisional' be deleted."

The amendment was adopted.

The Honourable Shri K. Santhanam (Madras : General) : Does it mean the word "Provisional" will be deleted before the word "Parliament" also ?

Mr. President : No ; that comes later on.

The question is—

"That in amendment No. 28 of List II (First Week), in clause (*2*) of the proposed article 311-A, for the words 'provisional President' in the first place where they occur, the words 'President so elected by the Constituent Assembly of the Dominion of India' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 28 of List II (First Week), in clause (*2*) of the proposed article 311-A, for the words 'the provisional President' in the second place where they occur, the word 'President' be substituted."

The amendment was adopted.

Mr. President: Then I take up the amendment which was sought to be moved by Dr. Deshmukh but which was actually moved by Mr. Shibban Lal Saksena.

The question is :

"That in clause (2) of the proposed new article 311-A, the word 'provisional' occurring before the word 'Parliament' be deleted."

The amendment was negatived.

(Article 311-A, as amended, was added to the Constitution.)

ARTICLE 311-B

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That after article 311-A the following new article be inserted :

'311-B. Such persons as the provisional President may appoint in this behalf shall become members of the Council of Ministers of the provisional President under this Constitution, and until appointments are made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution shall become and shall continue to hold office as members of the Council of Ministers of the Provisional President under the Constitution."

Council of Ministers of the Provisional President.

Dr. P. S. Deshmukh : Sir, I thank you for giving me this opportunity of moving this amendment of mine. I move :

"That in amendment No. 13 above, in the proposed new article 311-B, the word 'provisional' wherever it occures, be deleted."

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

Mr. President : I take it that Dr. Ambedkar accepts the amendment.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I do.

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†The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, this article 311-B is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other article which we have already passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have commented upon the provisions of this article 311-B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the memers of Parliament do not think that the existing Ministry is competent enough to

*CAD, Vol. X, 7th October 1949, p. 12.

†*Ibid.,* pp. 14-15.

discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the test of no confidence or confidence before the 26th of January, 1950—assuming that to be the date for the operation of the Constitution—this article 311-B does not take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311-B, probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the new Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

Shri H. V. Kamath : The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

The Honourable Dr. B. R. Ambedkar : That will be taken undoubtedly. "Appointment" means taking the oath of office. Otherwise there is no apppointment.

Shri H. V. Kamath : On that very day ?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. On that very day. "Appointment" includes oath of office.

Mr. President: I shall put Dr. Deshmukh's amendment to vote—I take it that it has been accepted by the Mover.

[The amendment was adopted. Article 311-B, as amended, was added to the Constitution.]

ARTICLE 312

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That for article 312, the following article be substituted :—

'312. (1) Until the House or Houses of the Legislature of each State for the time being specified in part of the First Schedule has or have been duly constituted and summoned to meet for the first section under the provisions of this Con-

Provisions as to Provincial Legislature in each Slate.

*CAD, Vol. X, 7th October 1949, p. 15.

stitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

(2) Notwithstanding anything contained in clause (*1*) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not come into operation and the assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.

(3) Any person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of this Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (*1*) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.'"

The provisions are quite clear and I do not think that they require any explanation.

Mr. President : Are there any amendments to this ? I do not see any.

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***Shri M. Ananthasayanam Ayyangar :** It all depends how long the interim period lasts, if it is a short one, there may not be any need for the dissolution. But what if it is otherwise ? We know every sitting Member will be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

The Honourable Dr. B. R. Ambedkar : Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

Shri H. V. Kamath : What about the clause concerning the Speaker ?

The Honourable Dr. B. R. Ambedkar : That was there in the original draft.

Mr. President : I will now put article 312 to vote. The question is :

"That the proposed article 312 stand part of the Constitution."

The motion was adopted.

Article 312 was added to the Constitution.

*CAD, Vol. X, 7th October 1949, p. 23.

ARTICLES 312-A TO 312-E, 312G AND 312-H

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after article 312, the following new aticles be inserted :—

'312A. Any person holding office of Governor in any Province immediately before the commencement of this constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of chapter II of Part VI of this Constitution and has entered upon his office.

Provisions as to provincial Governor of Provinces

312B. Such persons as the provisional governor of a State may appoint in this behalf shall become members of the council of Ministers of the provisional Governor under this Constitution, and until appointments are so made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution.

Council of Ministers of Provisional Governors.

312C. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

Provisions as to provisional legislatures in States in Part III of the First Schedule

312D. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the council of Ministers of such Rajpramukh under this Constitution and until appointments are so made, all persons holding office as Ministers immediately before the commencement of this Constitution in the corresponding Indian State shall become and shall continue to hold office as members of the council of Ministers of such Rajpramukh under this Constitution.

Council of Ministers for States in Part III of the First Schedule.

For article 312E I propose amendment No. 21 :

"That in amendment No. 16 above, for the proposed new article 312E, the following substituted :—

"312E. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencemet of this Constitution the population of India or any part thereof may, notwithstanding anything contained in this Constitution, be determined in such manner as the President may by order direct.'"

"312G. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of Province or Indian Stale may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as if the proceedings taken with reference

Provision as to Bills pending in the dominion Legislature and in the Legislatures of Provinces and Indian States.

*CAD. Vol. X, 7th October 1949, pp. 23-24.

to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of india or the Government of any State between the commencement of this Constitution and the thirty-first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a scheduled in a schedule of authorised expenditure athenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the correspoding Province or is authorised by the Rajprmukh of the State in accordence with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement"

Transactions occuring between the commencement of the Constitution and the 31st of March, 1950.

I do not think there is anything necessary to say by way of explanation of these articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word 'provisional' in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

Dr. P. S. Deshmukh : Mr. President, I move :

"That in amendment No. 16 above, in the proposed new article 312B, the word 'provisional', wherever it occures, be deleted."

"That in amendment No. 16 above, in the proposed new article 312A, the word 'provisional' where it occurs be deleted."

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as 'provisional'. I commend the amendments for the aceptance of the House.

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***The Honourable Dr. B. R. Ambedkar :** I cannot accept this amendment. My Friends Mr. Kamat and Prof. Saksena have read a great deal into this article 312-E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census fgures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been consid-

*CAD, Vol. X, 7th October 1949, pP. 26-27.

erably distrubed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

Shri H. V. Kamath : Has Dr. Ambedkar any objection to the principle of my amendment ?

The Honourable Dr. B. R. Ambedkar : I do not accept it. The import of this article is very limited. It is the determination of the population, not delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

[Articles 312-A to 312-E, 312-G and 312-H as proposed by Dr. Ambedkar and as amended by Dr. P. S. Deshmukh's amendment were adopted and added to the Constitution.]

ARTICLE 313

***The Honourable Dr. B. R. Ambedkar** : Sir, I move :

"That for article 313, the following be substituted :—

Power of the President to remove difficulties.

313. (1) The President may, for the purpose of removing any dificulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament."

This is a reproduction of the provision contained in the Government of India Act, which is necessary for the transition period.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, there seems to be considerable missapprehension as to the necessity of the provisions

*CAD, Vol. X, 7th October 1949, pp. 27-28.

†*Ibid.,* pp. 30-31.

contained in article 313. My Friend Dr. Deshmukh who has moved his amendment very kindly said that if I gave a satisfactory explanation as to the provsions contained in article 313 he would not press his amendment. With regard to article 313 I think certain facts will be admitted. The first fact which I expect will be admitted on all hands is this. During the transition period there are bound to arise certain difficulties which it is not possible for the Drafting Committee, or for the matter of that any Member of this House, to fully foresee right now and to make any provision. Therefore, It is necessary that there should reside somewhere some power to resolve these unforeseen difficulties.

The question therefore is to what extent and up to what period these powers should be lodged in that particular authority. My friend, Dr. Deshmukh, said that under section 310 of the Goverment of India Act, the power was to last for six months. I think he is under a mistake. The power was to last for six months after Part III had come into operation. Ours is a very limited provision. The power to resolve difficulties by constitutional provisions vested by articls 313 would automatically come to an end on the day of which the new Parliament under the new provisions comes into existence. We therefore do not propose under this article to allow the President to exercise the powers given to him under 313 a day longer than the proper authority entitled to make amendments comes into being. That is one feature of this article 313.

Admitting the fact that difficulties will arise and that they must be resolved and the power must vest with somebody, the question that really arises for consideration is this : whether this power should vest in the President or it should vest in the provisional Parliament. There cannot be any other alternative. The reason why the Drafting Committee has felt that it would be desirable to adopt the provisions contained in article 313 and vest the power in the President is because the duration of the transitional Parliament is so small and it might be busy with so many other matters requiring Parliamentary legislation that it would not be possible for the Parliament sitting during the transitional period to grapple with a matter which must be immediately solved.

Let me give one or two illustrations of the difficulties that are likey to arise. By our Constitution we have made considerable changes in the powers of taxation of the States and Centre. On the 26th January next, when the Constitution comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and

therefore this matter sould be regularised. If we were to get it regularised by the provisional Parliament, I think my friend would realise that it would take such a long time that the crisis would continue. Therefore, rather than adopt the ordinary Parliamentary procedure of having a Bill read three times, sent to Select Committee, having a consideration motion, circulation and so on, I think it is desirable, for the purpose of saving the Constitution from difficulties, to lodge this power with the President so that he may expeditiously act. Therefore, as I said, on the merits the provision is necessary. Comparing it with the provisions contained in section 310, ours is a much limited proposal, and I submit that having regard to these circumstances there cannot be any serious or fundamental objection to the House acepting article 313.

With regard to the point made by my Friend Mr. Kamat, I think he will realise that there is no error on the part of the Drafting Committee in refering to the Government of India Act, 1935, without making a distinction between the original Statute and the Statute as adapted, because he will see that the Statute as adapted itself provides that its short title shall be, "Government of India Act, 1935", and I have no doubt that it is in that sense that it will be understood when this article comes to be interpreted.

Dr. P. S. Deshmukh : May I ask a question ? If the Parliament is asked to approve the order passed by the President would there be any harm ?

The Honourable Dr. B. R. Ambedkar : But "approval" means what ? It may nullity the action taken by the President, and the object of this provision is to provide an effective remedy. That way it cannot come into force quickly while what we want is that the matter should come into force at once.

Mr. President: I shall put the amendments now. Amendment No. 37 moved by Dr. Ambedkar.

The question is :

> "That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words 'each House of' be deleted."

The amendment was adopted.

Dr. P. S. Deshmukh : Sir, I beg leave to withdraw my amendments Nos. 30, 31 and 32 but not 33.

Amendments Nos. 30, 31 and 32 were, by leave of the Assembly, withdrawn.

Article 313, as amended, was added to the constitution.

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ARTICLE 307

***Shri Biswanath Das :** My complaint in this regard is that neither the Law Department nor the office of the Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

Mr. President: Without knowing what the Constitution is going to be!

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : My Friend is thoroughly misinformed. He does not know what is being done.

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[Article 307 as amended was added to the Constitution.]

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ARTICLE 308

†Mr. President : We go to article 308. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for clause (3) of article 308 the following clause be substituted : —

'(3) Nothing in this Constitution shall operate invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgement, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution."

Also :

"That after clause (3) of article 308, the following new clause be inserted :—

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgement, decree or order of any court within that State shall cause, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court."

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed section 4 —in case they are not finally disposed of before the 26th January, assuming that to be the date on which this Constitution comes into existence. The important words are— "to dispose of the appeal". There is no power to entertain an appeal. And the other important words are— "such jurisdiction authorised by law", that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction, no more jurisdiction than what we have

*CAD, Vol. X, 10th October 1949, p. 65.

†*Ibid.,* pp. 72-73

conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or a case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed of part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the Indian States there are Privy Councils which supervise the judgements of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Court, in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having definition of Privy Council in our article 306 so as to cover the the different nomenclatures and variations of these institutions.

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***Mr. President :** Dr. Ambedkar, would you like to say anyting ?

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments

*CAD, Vol. X, 10th October 1949, p. 76.

do seem to have forgotton the fact, that that jurisdiction is not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humilation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the foot-note to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constituion itself.

Mr. President : Then I will put he amendments to vote.

[Both the amendments moved by Dr. Ambedkar as mentioned before were adopted: Other amendments were negatived. Article 308, as amended, was added to the Constitution.]

ARTICLE 310

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :—

"That for article 310, the following be substituted :—

310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on his date the judges of the High Court in the corresponding State, and shall hereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specifed and shall, notwithstanding anything contained in clauses (1) and (2) of artcle 193 of this Constitution but subject to the provisio to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression 'judge' does not include n acting judge or an additional judge."

this article is merely what we used to call a "carry over article" merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

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*CAD, Vol. X, 10th October 1949, p. 77.

***Mr. Nazirudin Ahmad :** Sir, I move :

"That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article 310, for the words 'as are provided for under article 197 of this Constitution in respect of the judges of such High Court' the words as they were entitled to immediately before the said commenceient' be substituted."

Clause (1) of this article provides that the Judges of High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that this amendment anticipates Schedule II ? This matter is to be dealt with under Schedule II and the proper time would be when Schedule II is before the House.

[Amendment of Mr. Ahmed was negatived. Dr. Ambedkar's amendment as mentioned earlier was adopted. Article 310 was added to the constitution.]

ARTICLE 311

†The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for article 311, the following article be substituted :—

"311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.

Provisions as to provincial Presidents of the Union and the Speaker and Deputy Speaker thereof.

Explanation.—For the purposes of this clause, the Constituent Assembly of the Dominion of India includes—

(i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and

(ii) the members chosen to fill casual vacancies in the said Assembly.

(2) The President may by rules provide for—

(*a*) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,

(*b*) the manner in which the representatives of such States or other territories in the provisional parliament shall be chosen, and

(*c*) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, also a membr of a House of the Legislature of a Governor's Province or an Indian State, then, as from the date of commencemnt

*CAD, Vol. X, 10th October 1949, p. 77.

†*Ibid.,* pp. 79-80.

of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.

(4) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1) of this article."

Sir, I move :

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 311, the following be substituted :—

'(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a minister for any such State, then as from the date of commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy'."

Sir, I move :

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted :—

'(*3a*) Notwithstanding that any such vacancy in the Constituent assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred.'"

The object of this clause is that when constituting a provisional Parliament, it is proposed to dispense with what is called double membership.

The other provisions are merely ancillary.

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***Mr. President :** Dr. Ambedkar, have you anything to say ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, before I begin, I would like your permission to omit the word "becomes" in clause (3) of amendment No. 195, occurring between "thereafter" and "at any time before...". The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (*4*) of this article, there is a certain account of discrepancy between the provisions relating to the

*CAD, Vol. X, 11th October 1949, pp. 98-100.

carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

The other point of some substance was the one raised by my Friend Mr. Muniswamy Pillay with regard to the representation of the Scheduled Castes in the Provisional Parliament. The position is this. There are at present 310 Members of this Assembly, and the Provisional Parliament will also continue to consist of 310 Members. On the basis of population which is the principle adopted for the representation of the Scheduled Castes in the future Parliament, on a purely population basis, they should get 45 seats out of this 310. They have, as a matter of fact, today only 28 seats. The article makes a definite provision that there shall be no diminution in the 28 seats they have now. But with regard to making good the difference between the 45 to which they are entitled on the basis of population and the 28 which they have got, I think we have left enough power in the hands of the President to adopt and modify the rules so as to make good the deficiency, as far as it would be practicable to do so under the provisions of new article 312 F.

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference.

It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. The reason why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved.

Shri H. V. Pataskar : My amendment gives the option to the Member.

The Honourable Dr. B. R. Ambedkar : That, I think, will create a lot of complication. If the Member is given the option, that will create complication, because it may be that the same evil which we want to do away with may be repeated. We must take precaution to see that the evil is not repeated. I, therefore, submit that the provisions contained in 311 should commend themselves to the House.

Shri Ram Sahai (Madhya Bharat) **:** What about the amendment moved by Mr. Sita Ram Jajoo ?

The Honourable Dr. B. R. Ambedkar : We had anticipated the point raised by him, and we have modified by amendment 195 in which I have made provision for Indian States. The only thing I have not made provision for is for persons holding offices of profit.

Mr. President : I shall now put the amendments to vote one by one.

[6 Amendments by Mr. Kamath, 2 by Mr. Tyagi, 4 by Mr. Muniswamy Pillay, one by Mr. Saksena and 4 by others were negatived. Article 311 as amended by Dr. Ambedkar's amendment was added to the Constitution.]

ARTICLE 312-F

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That after article 312-E, the following new article be inserted :—

'312-F. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (*1*) of article 311 of this Constitution [including vacancies referred to in clauses 3 and (3*a*) of that article] shall be filled and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with eletions to fill such vacancies shall) be regulated—

Provisions as to this filling of casual vacancies in the provisional President and the Provisional legislatures of the States.

*CAD, Vol. X, 11th October 1949, pp. 103-104.

(*a*) in accordance with such rules as may be made in this behalf by the President, and

(*b*) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union :

Provided that where any such seat as is mentioned in this article is, immediately before it becomes vacant, held by a person belonging to the Scheduled Castes or to the Muslim or Sikh community and representing a State for the time being specified in Part I of the First Schedule, the person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a State for the time being specified in Part I of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote.

Then I am moving my amendment No. 205 to substitute a different explanation.

"That in amendment No. 164 of List III (Second Week), for the Explanation to clause (1) of the proposed new article 312-F, the following Explanation be substituted :—

Explanation.—For the purpose of this clause

(*a*) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 300-A specifying the Scheduled Castes in relation to that corresponding State ;

(*b*) all the Scheduled Castes in any Province or State shall be deemed to be a single community."

Then I come to sub-clause (2).

(2) Casual vacancies in the seats of members of a House of the provisional Legislature of a State functioning under article 312 or article 312-C of this Constitution shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated in accordance with such provisions governing the filling of such vacancies and regulating such matters as were in force immediately before the commencement of this Constitution subject to such exception and modifications as the President may by order by direct."

I do not think that any explanation is necessay. The provisions are quite clear. If any point is raised in the course of the debate, I shall be quite prepared to offer such explanation as I could give.

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Siks during this interim period. They object to this carry over on the ground that the Muslims and Sikhs have surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My, submission on this point is this, that whatever arrangements have been made, those arrangements are made in respect of the permanent structure of Parliament which is to come into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

With regard to the amendment of Shrimati Purnima Banerjee, I do not think it is necessary to make a specific provision for the retention of women in this Constituent Assembly. I have no doubt about it that the President in the exercise of his powers of rule-making will bear this fact in mind and see that cerain number of women members of the Constituent Assembly or of the various parties will be brought in as members of the Provisional Parliament.

With regard to Mr. Munniswamy Pillay's amendment, the new thing he seeks to introduce is the provision for the Scheduled Tribes. As a matter of fact there is no objection to making provision for the Scheduled Tribes but the point is this that at present there is no enumeration of Scheduled Tribes, because Scheduled Tribes as such has not been recognised under the Government of India Act, 1935. Whatever tribes are included for the purposes of representation under the Government of India Act are called backward tribes. Consequently, if my Friend Mr. Munniswamy Pillay were to leave this matter in the hands of the Drafting Committee, we shall probably make some suitable arrangement to give effect to his amendment.

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*CAD, Vol. X, 11th October 1949, pp. 112-113.

Mr. President : I will put the amendment to vote now.

[3 amendments were negatived. Article 312-F as amended by Dr. Ambedkar's amendment was added to the Constitution]

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***Mr. President :** Then we take up Schedule IV.

Shri T. T. Krishnamachari : Sir, I move that Schedule IV be deleted.

Some Honourable Members : How can it be deleted ?

Mr. President : So far as the Drafting Committee is concerned, they have been moving for deletion of particular articles. Now, there are amendments to this Schedule IV. I think it will be better if Dr. Ambedkar were to explain the position as to why the Schedule is dropped, because Members have given notice of amendments. That will make the position clear.

The Honourable Dr. B. R. Ambedkar : Mr. Krishnamachari will explain.

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†The Honourable Dr. B. R. Ambedkar : Sir, with regard to the Instrument of Instructions, there are two points which have to be borne in mind. The purpose of the Instrument of Instructions as was originally devised in the British Constitution for the Government of the colonies was to give certain directions to the head of the states as to how they should exercise their discretionary powers that were vested in them. Now the Instruments were effective in so far as the particular Governor or Viceroy to whom these instructions were given was subject to the authority of the Secretary of State. If in any particular matter which was of a serious character, the Governor for instance, persistently refused to carry out the Instrument of Instructions issued to him, it was open to the Secretary of State to remove him, and appoint another and hereby secure the effective carrying out of the Instrument of Instructions. So far as our Constitution is concerned, there is no functionary created by it who can see that these Instruments of Instructions are carried out faithfully by the Governor.

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion at all. He has to act on the advice of the Prime Minister in the Matter of the election of members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so,

*CAD, Vol. X, 11th October 1949, p. 114

†*Ibid.,* pp. 115-116.

supposing the Prime Minister does not propose, for any special reason or circumstances, to include in his Cabinet members of the minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of Instruction to act in a particular manner. It is therefore felt, having regard to the fact there is no discretion in the Governor and there is no functionary under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such Instrument of Instructions which really can be effective in a different set of circumstances which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

Mr. President : The question is :

"That the Fourth Schedule be deleted."

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

SECOND SCHEDULE

***Mr. President :** The House will now take up Schedule II.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for Part I of the Second Schedule, the following be substituted :—

PART I

Provisions as to the President and the Governors of States for the time being specified in Part I of the First Schedule.

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensum, that is to say :

   The President—10,000 rupees.

   The Governor of a State—5,500 rupees.

   There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution

3. The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively before the commencement of this Constitution.

*CAD, Vol. X, 11th October 1949, pp. 116-18.

4. While the Vice-president or any other person is discharging the functions of, or is acting as President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be."

PART II

"That in the heading in Part II, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

"That for paragraph 7, the following paragraph be substituted :—

'7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution."

PART III

"That in paragraph 8, for the words 'respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August 1947' the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement' be substituted."

PART IV

"That for Part IV of the Second Schedule, the following be substituted :—

PART IV

Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part I of the First Schedule

10. (1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice—5,000 rupees :

Any other judge—4,000 rupees :

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or of its predecessor, Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11.(1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice—4,000 rupees

Any other judge—3,500 rupees

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every such judge shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part, unless the context otherwise requires.

(a) the expresion "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge.

(b) "actual service" includes—

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."

PART V

"That in the heading of Part V, for the word 'Auditor-General' the words 'Comptroller and Auditor-General' be substituted.

'That for paragraph 14, the following paragraph be substituted :—

'14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor-General of India under article 310A of this Constitution shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement."

"That in paragraph 15, for the word 'Auditor-General' in the first place where it occurs, the words 'Comprtoller and Auditor-General' be substituted."

With your permission, I will explain the provisions tomorrow.

Mr. President : The House stands adjourned till 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 12th October 1949.

WEDNESDAY, THE 12TH OCTOBER 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock (Wednesday, the 12th October 1949), Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

SECOND SCHEDULE—(*contd.*)

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) **:** Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month *plus* a free house, and the salary for a puisne judge will be Rs. 4,000 per month *plus* a free house. With regard to the Supreme Court, the position is this, that

*CAD, Vol. X, 12th October 1949, pp. 119-122.

according to the Constitution, any Federal Court judge who chooses to become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this : whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision Should be made for allowing him to continue to draw the salary which he now gets as a judge of the Federal Court. The decision of the Drafting Committee has been that while the normal salaries of the Supreme Court judges should be as stated in the Second Schedule, provision ought to be made to enable the Federal Court Judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories—those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the first category, *i.e.,* those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule, so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under the Supreme Court also arises in the case of the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories those appointed before

the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule II and the scale of salary obtaining in other countries, for instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Anyone who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all, compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October 1948, if their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such grievance and therefore we have not introduced a countervailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the president. The president of the Union is obviously a functionary who would replace the present Governor-General

and in fixing the salary which we have fixed, namely Rs. 10,000 we have to consider, in coming to a conclusion, as to whether it is less or more than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem*. This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors. One factor is that the salary of the President should be subject to income-tax. It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the president if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the president's salary carries with it certain allowances. With regard so these allowances I might mention that when the Government of India Act, 1935, was passed, the Act merely fixed the salary for the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act

did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

(1) Sumptuary allowance of Rs. 45,000 per annum.

(2) Expenditure from contract allowance Rs. 4,65,000.

(3) State conveyance : Motor cars : Rs. 73,000.

(4) Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circusmstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed

by Schedule II and the salary which he is at present getting. When that incumbent disappears and another is appointed he will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

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***Shri Prabhu Dayal Himatsingha :** ...Sir, I support the article put forward by Dr. Ambedkar.

Pandit Hirday Nath Kunzru : (United Provinces : General) : Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a month and the Governor of a State Rs. 4,500 a month. It was then proposed....‡

The Honourable Dr. B. R. Ambedkar : President Rs. 5,500 a month.

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, all I wish to say is that there are three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule II allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent, we thought that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally....‡

Shri H. V. Kamath : I did not refer to rent and I do not know whether it is a free house or not.

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*CAD, Vol. X, 12th October 1949, p. 144.

†*Ibid.,* pp. 146-148.

‡Dots indicate interruption—Ed.

The Honourable Dr. B. R. Ambedkar : I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtures.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are many number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my Friend, Mr. Himatsingka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do is to ask me to accept a general proposition, that is to say, a proposition saying "any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur.

The anomaly exists because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph 11 of sub-paragraph (2). I would like to introduce after the word "shall" in the seventh line the following words :

"In addition to the salaries specified in sub-paragraph (1) of this paragraph."

I have also another amendment in sub-paragraph 3 of paragraph 11.1 I would omit the first "such" and after the word "judge" I would add :

"of the High Court."

Shri H. V. Kamath : That is my amendment.

The Honourable Dr. B. R. Ambedkar : I accept it, and I now hope the House will accept the Schedule as amended.

Shri R. K. Sidhva : What about my amendment regarding the salaries and allowances of the President and the Governor ?

The Honourable Dr. B. R. Ambedkar : That will be decided by Parliament.

Mr. President : I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

* * * * *

Mr. President : The third part to amendment 270 was the one accepted by Dr. Ambedkar. As it is, the third part reads :

"In sub-paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words 'specified in sub-paragraph 4(1) of this paragraph, shall' add the words in addition to the salary specified in sub-paragraph (1) of this paragraph."

The Honourable Dr. B. R. Ambedkar : I would like to have my own words.

†[All the amendments of Dr. Ambedkar were adopted. The second Schedule as amended, was added to the Constitution.]

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*CAD, Vol. X, 12th October 1949, p. 148.

† *Ibid.,*

The Assembly re-assembled after Lunch at Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PART VI-A

***Mr. President :** We shall now take up Part VI-A.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after Part VI, the following new Part be inserted :—

PART VI-A

THE STATES IN PART III OF THE FIRST SCHEDULE

211 A. The provisions of Part VI Of this Constitution shall apply in relation to the States for the time being specified in Part III of the First Schedule as they apply in relation to the States for the time being specified in Part I of that Schedule subject to the following modifications and omissions, namely :—

Application of provisions of Part VI to States in Part III of the First Schedule.

(1) For the word "Governor" wherever it occurs in the said Part VI, except where it occurs for the second time in clause (*b*) of article 209, the word "Rajpramukh" shall be substituted.

(2) In article 128, for the word and figure "Part I" the word and figure "Part III" shall be substituted.

(3) Articles 131, 132 and 134 shall be omitted.

(4) In article 135,—

(*a*) in clause (1), for the words, "be appointed" the word "becomes" shall be substituted;

(*b*) for clause (3), the following clause shall be substituted, namely :—

"(3) The Rajpramukh shall be entitled without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine".;

(*c*) in clause (*4*), the words 'emoluments and' shall be omitted.

(5) In article 136, after the words "senior-most judge of that court available" the words 'or in such other manner as may be prescribed in this behalf by the President' shall be inserted.

(6) In article 144, the proviso to clause (*1*) shall be omitted.

(7) In article 148, for clause (*1*) the following clause shall be substituted, namely :—

"(1) For every State there shall be a Legislature which shall consist of the Rajpramukh and—

(a) in the State of Mysore, two Houses;

(b) in other States, one House."

(8) In article 163, for the words "as are specified in the Second Schedule" the words "as the Rajpramukh may determine" shall be substituted.

*CAD, Vol. X, 12th October 1949, pp. 154-155.

(9) In article 170 for the words "as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State" the words "as the Rajpramukh may determine" shall be substituted.

(10) In clause (3) of article 177—

(a) for sub-clause *(a),* the following sub-clause shall be substituted, namely :—

"*(a)* the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order;

(b) after sub-clause *(e),* the following sub-clause shall be inserted, namely :—

"*(ee)* in the case of the State of Travancore-Cochin, a sum of fifty-one lakhs of rupees required to be paid annually to the Devaswom fund under the covenant entered into before the commencement of this Constitution by the Rulers of the Indian States of Travancore and Cochin for the formation of the United States of Travancore and Cochin;"

(11) In article 183, for clause (2), the following clause shall be substituted, namely :—

"(2) Until rules are made under clause *(1)* of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the State or, where no House of the Legislature for the State existed, the rules of procedure and standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province, as may be specified in this behalf by the Rajpramukh of the State, shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be."

(12) In clause (2) of article 191, for the word "Province" the words "Indian State" shall be substituted.

(13) For article 197, the following article shall be substituted, namely :—

"197. The judges of each High Court shall be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by the President after consultation with the Rajpramukh :

Salaries etc. of Judges.

Provided that neither the salary of a judge nor his rights in respect of leave, of absence or pension shall be varied to his disadvantage after his appointment.'"

I think I will move the other amendments afterwards.

As will be seen, the underlying idea of this Part is that Part VI of this Constitution which deals with the Constitution of the States will now automatically apply under the provisions of article 211-A to States in Part III. But it is realized that in applying Part VI to the Indian States

which will be in Part III there are special circumstances for which it is necessary to make some provision and the purpose of this particular amendment 217 is to indicate those particular articles in which these amendments are necessary to be made in order to deal with the special circumstances of the States in Part III. Otherwise the States in Part III so far as their internal constitution is concerned will be on a par with the States in Part I.

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***Prof. Shibban Lal Saksena :** The amendment that I am moving is 288 of List XII.

Mr. President : I have just received it. You can move it.

Shri T. T. Krishnamachari : But that has not been moved.

The Honourable Dr. B. R. Ambedkar : How can you move it ?

Prof. Shibban Lal Saksena : I am not moving the amendment which the President read out. I am moving No. 288 of List XII.

* * * * *

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PART VI-A—*(contd.)*

†Mr. President : I think it would be better to take the other articles which are sought to be amended in connection with the States and take all the amendments, and then have the general discussion. I do not think it is necessary for Dr. Ambedkar to read the whole thing.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I move

"That article 224 be omitted."

"That article 225 be omitted."

"That after article 235, the following new article be inserted, namely :—

'235A. (1) Notwithstanding anything contained in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.

Armed forces in States in part III of the First Schedule.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union.'"

*CAD, Vol. X, 12th October 1949, p. 158.

†*Ibid,* pp. 175-177.

"That for article 236, the following article be substituted, namely :—

Power of the Union to undertake executive, legislative or judicial functions in relation to any territory not being part of the territory of India.

236. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.'"

"That article 237 be omitted."

"That after article 274D, the following new articles be inserted, namely :—

Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on goods imported into or exported from such States.

'274DD. Notwithstanding anything contained in the foregoing provisions of this Part, the President may enter into an agreement with a State for time being specified in Part III of the First impose restrictions Schedule with respect to the levy and collection of any tax or duty leviable by the State on goods imported into the State from other States or on goods exported from the State to other States, and any agreement entered into under this article shall continue in force for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

Effect of articles 274A and 274C on existing laws.

'274DDD. Nothing in articles 274A and 274C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.

"That after article 302, the following new article be inserted, namely :—

Rights and privileges of Rulers of Indian States.

'302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A* of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.'"

'That after article 306, the following new articles be inserted :—

Temporary provisions with respect to States in Part III of the First Schedule.

"306B. Notwithstanding anything contained in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law Provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution :

"Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.,' "

"That for clause (1) of article 258, the following clause be substituted :—

'(1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to—

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;

(b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources;

(c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267A of this Constitution, and when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.' "

"That in chapter I of Part IX, after article 267, the following new article shall be inserted, namely :—

'267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse—

Privy purse sums of Rulers.

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 258 of this Constitution, be determined by order of the President,' "

"That after article 270, the following new article be inserted :—

'270A. (1) As from the commencement of this Constitution—

(a) all assets relating to any of the matters enumerated in the Union List vested immediately before such commencement, in any Indian State corresponding to any State for the time obligations of being specified in Part III of the First Schedule shall be vested in the Government of India, and

Succession to property assets, liabilities and obligations of Indian States.

(b) all liabilities relating to any of the said matters of the Government of any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be the liabilities of the Government of India,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the First Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities and obligations other than the assets and liabilities referred to in clause (1) of this article.' "

Shri Brajeshwar Prasad (Bihar : General) **:** Sir, I would like to suggest that these two amendments No. 218 and 219 relating to articles 224 and 225 should be disposed of first, or the amendments standing in the name of honourable Members to these articles will also have to be moved.

Mr. President : They have to be deleted. It does not take any time to dispose them of.

[Article 224 was deleted from the Constitution.]

ARTICLE 306B

***Mr. President :** Amendment No. 222 : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have already moved that.

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The Assembly re-assembled after Lunch at Four of the Clock, Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair. (13th October 1949).

ARTICLE 3

(REOPENED)

†Mr. President : We shall now take up those consequential amendments No. 226 etc.

The Honourable Dr. B. R. Ambedkar : I would ask Mr. T. T. Krishnamachari to move the amendments on my behalf.

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ARTICLE 296

‡Mr. President : We shall now take up article 296; amendment No. 15. We have got a large number of amendments. Some of the amendments are amendments to the amendment to be moved on behalf of the Drafting Committee. Some are amendments to other amendments which are to be moved by other Members. Many of them overlap. Therefore, I think Members will themselves exercise a certain amount of discretion in not insisting upon amendments which are only overlapping and which are covered by other amendments.

Shri H. V. Kamath (C. P. & Berar: General)**:** We shall abide by your ruling, Sir.

Mr. President : I do not want to give any ruling if I can help it.

*CAD, Vol. X, 13th October 1949, p. 183.

†*Ibid.,* p. 210.

‡*Ibid.,* 14th October 1949, p. 229.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I move :

"That with reference to amendment No. 3163 of the List of amendments for article 296 the following article be substituted:—

'296. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.' "

Claims of Scheduled Castes and Scheduled Tribes to services and posts

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***Mr. President :**... The next amendment which purpoorts to substitute is No.23, which stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not propose to move it.

Mr. President : Then No. 24.

The Honourable Dr. B. R. Ambedkar : Not being moved.

[The amendment of Dr. Ambedkar mentioned above was adopted Article 296, as amended, was added to the Constitution.]

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ARTICLE 299

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†**Sardar Hukam Singh :** My question has not been answered. Have these four Sikh Classes been included in the Scheduled Castes.

The Honourable Dr. B. R. Ambedkar : Of course, they will be.

Shri K. M. Munshi : The President is empowered to issue, under article 300-A, a list of Scheduled Castes. In that, these Scheduled Castes will find a place.

Sardar Hukam Singh : Where is the guarantee that the President will include these people in that list ? We have given up all safeguards to secure this in the Constitution. That has not been done.

Shri K. M. Munshi : The President has that power. The President is sure to keep to the pledge which has been given. This decision finds a place in the Advisory Committee's Report that the Sikh Scheduled Castes will form part of the Scheduled Castes and provided with the safeguards under article 296 which we have already passed. There is no question of going back upon that pledge, you may take it from me. I repeat the Sikh Scheduled Castes will be included in the list of Scheduled Castes and Scheduled Tribes in the Punjab.

[Article 299, as amended, was added to the Constitution.]

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*CAD, Vol. X, 14th October 1949, pp. 236-237.

†*Ibid.,* p. 262.

ARTICLE 48

***Shri H. V. Kamath :** Dr. Ambedkar was quite clear when he gave his answer to me the other day, but now he seems to have some doubt in his own mind, and he has come now with an amendment seeking to provide residences to Governors and the President, without payment of rent. We should, proceed logically, provide rent-free accommodation to Ministers also.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say a word. This amendment is merely consequential or analogous to the provision we have made with regard to the Rajpramukhs. In the clauses that were moved the other day with regard to the residences of Rajpramukhs, we have definitely stated that they will be rent-free. On comparing the similar clauses relating to the Governors, we found that somehow there was a slip and we did not mention rent-free houses. It is to make good that lacuna, and to bring the cases of the Governors and the President on the same footing as the Rajpramukhs that this amendment is needed.

With regard to the question of Ministers, that will be regulated by law made by Parliament. Whether Parliament will be prepared to give them salary with house, and if with house, whether it will be free of rent or with rent, are all matters that will be regulated by Parliament, because the offices of Ministers are political offices dependent upon the goodwill and the confidence of the House, and it seems to me that Mr. Kamath will very easily understand that it would be not proper to remove the Ministers from the purview and jurisdication of Parliament.

Mr. President: I would like to put it to vote.

The question is :

"That in clause (3) of article 48, for the words 'The President shall have an official residence, the words 'The President shall be entitled to the use of the Government House without payment of rent' be substituted."

[The amendment was negatived.]

Mr. President : Then I put the amendment moved by Shri T. T. Krishnamachari.

The question is :

"That in clause (3) of article 48, for the words 'The President shall have an official residence' the words 'The President shall be entitled without payment of rent to the use of his official residences' be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move amendment No. 360.

"That clause *(5a)* of article 62 be omitted."

*CAD, Vol. X, 14th October 1949, p. 268.

The reason for this is, as I told the House the other day on behalf of Dr. Ambedkar, that we do not propose to move Schedule IIIA and also the Schedule which deals with Instructions to Governors. The clause in question reads thus : "(*5a*) In the choice of his ministers and in the exercise of his other functions under this constitution, the President shall be generally guided by Instructions set out in Schedule IIIA." Actually, since Schedule IIIA is not moved, this clause becomes superfluous. Therefore I have moved for its omission.

Shri H. V. Kamath : Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in order to make this point clear. That is my recollection. The President will kindly say whether I am right or wrong. Nowhere in the Draft Constitution has this point been clarified. I hope Dr. Ambedkar will do so, and not leave it vague as at present.

***The Honourable Dr. B. R. Ambedkar :** Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement. The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question. I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliamentary democracy, requires three different organs of the State, the executive, the judiciary and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court.

*CAD, Vol. X, 14th October 1949, pp. 269-70.

Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

I remember, Sir, that you raised this question and I looked it up and I had with me two decisions of the King's Bench division which I wanted one day to bring here and refer in the House so as to make the point quite clear. But I am sorry I had no notice today of this point being raised. But this is the answer to the question that has been raised.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

Shri H. V. Kamath : If in any particular case the President does not act upon the advice of his Council of Ministers, will that be tentamount to a violation of the Constitution and will he be liable to impeachment?

The Honourable Dr. B. R. Ambedkar : There is not the slightest doubt about it.

The Honourable Shri K. Santhanam (Madras : General)**:** I may add to Dr. Ambedkar's statement, and point out that there are certain marginal cases in which the President may not accept the advice of the Ministers. When a Ministry wants dissolution it will be open to the President to say that he will instal another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers.

The Honourable Dr. B. R. Ambedkar : I would only like to say one thing in reply. That was once the position. It has been defined very clearly in Macaulay's History of England what the King can do. But I say that these are matters of convention. In Canada this question arose when Mr. Mackenzie King wanted dissolution. The question was whether the Governor-General was bound to give a decision or wheher he was free

to call the leader of the Opposition to form an alternative Ministry. On the advice of the British Government, the Governor-General accepted the advice of Mr. Mackenzie King and dissolved the Parliament.

Shri H. V. Kamath : Instead of Dr. Ambedkar's *obiter dictum* why not have a Constitutional provision ?

The Honourable Dr. B. R. Ambedkar : We cannot discuss this question in this way.

[Amendment No. 360 mentioned earlier of Mr. T. T. Krishnamachari was adopted. Clause (5a) of Article 62 was omitted.]

ARTICLE 303

***The Honourable Shri K. Santhanam :** May I enquire whether a person, who has lost his State by merger in a province continues to be a Ruler or he has become successor ?

Shri T. T. Krishnamachari : The whole difficulty is, this is rather intricate. It is baffling. I admit that a person who has lost his State is nevertheless a Ruler, under the definition in (nn), and also for the purpose of article 267-A.

The Honourable Shri K. Santhanam : Why not his son also be a Ruler ?

Shri T. T. Krishnamachari : Might be.

The Honourable Dr. B. R. Ambedkar : If I may say so, this definition of Ruler is intended only for the limited purpose of making payments out of the privy purse. It has no other reference at all.

The Honourable Shri K. Santhanam : My point is whether it will be so construed as to mean two people at the same time entitled to the allowances. I want to ensure that at a time there will be only one person who will be entitled under the covenant to receive payment.

Mr. President: I think that is just secured by this, because the person recognised as the Ruler alone will be entitled to the payment.

The Honourable Dr. B. R. Ambedkar : That would be governed by the provisions regarding recognition. I am sure the President is not going to recognise two or three or four persons. This expression is deliberately used in order to give the power to the President.

The Honourable Shri K. Santhanam : He might be called the Ruler or successor.

Mr. President : Mr. Santhanam, I think that is quite clear. ...I do not suppose any further discussion is necessary. I shall put it to vote.

[The amendment of Shri T. T. Krishnamachari to substitute sub-clause* (nn) *of clause (1) of Article 303 was adopted.]

*CAD, Vol. X, 14th October 1949, p. 282.

***Mr. President :** We then go to the Schedule. ...

FIRST SCHEDULE

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for the First Schedule the following be substituted :—

"FIRST SCHEDULE"

(ARTICLES 1 AND 4)

THE STATES AND THE TERRITORIES OF INDIA

PART I

Names of States	*Names of corresponding Provinces*
1. Assam	Assam
2. Bengal	West Bengal
3. Bihar	Bihar
4. Bombay	Bombay
5. Koshal-Vidarbha	Central Provinces and Berar
6. Madras	Madras
7. Orissa	Orissa
8. Punjab	East Punjab
9. United provinces.	United Provinces.

TERRITORIES OF STATES

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the province of Assam, the Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal."

Shri B. Das (Orissa : General) **:** We wanted Utkal to be the name of ORISSA.

The Honourable Dr. B. R. Ambedkar : You may move an amendment.

"The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were being administered by the Government of that Province under the provisions of the Extra-Provincial Jurisdiction Act. 1947.

The territory of each of the other States shall comprise the territories which immediately before the commencement of this constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

*CAD, Vol. X, 14th October 1949, pp. 286-288.

PART II.

Names of States.

1. Ajmer
2. Bhopal
3. Bilaspur
4. Coorg
5. Cooch-Behar
6. Delhi
7. Himachal Pradesh
8. Kutch
9. Manipur
10. Rampur
11. Tripura

TERRITORIES OF STATES

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Chief Commissioner's Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the same name.

The territory of each of the other States shall comprise the territories which, by virtue of an order made under section 290 A of the Government of India Act, 1935, were immediately, before the commencement of this Constitution administered as if they were a Chief Commissioner's Province of the same name.

PART III.

Names of States.

1. Hyderabad
2. Jammu and Kashmir
3. Madhya Bharat
4. Mysore
5. Patiala & East Punjab States Union
6. Rajasthan
7. Saurashtra
8. Travancore-Cochin
9. Vindhya Pradesh

TERRITORIES OF STATES

The territory of the State of Rajasthan shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Rajasthan and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United States of Kathiawar (Saurashtra) and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other states shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State.

The Andaman and Nicobar Islands."

Sir, I do not think the amendment which I have moved calls for any explanation.

Shri Jainarain Vyas : I would like to know if Sirohi State has been put in anywhere.

The Honourable Dr. B. R. Ambedkar : Sirohi, I understand is administered under the Extra-Provincial Jurisdiction Act, 1947, partly by Bombay and partly by Rajasthan. That is the reason why it has not been separately mentioned.

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ARTICLE 264A

***The Honourable Dr. B. R. Ambedkar** (Bombay: General) **:** Sir, I move amendment No. 425.

"That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A the following be substituted :—

'264A. (1) No law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place—

Restriction as to imposition of tax on Sale or purchase of goods.

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.—For the purposes of sub-clause *(a)* of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.' "

*CAD, Vol. X, 16th October 1949, pp. 325-327.

Sir, as everyone knows, the sales tax has created a great deal of difficulty throughout India in the matter of freedom of trade and commerce. It has been found that the very many sales taxes which are levied by the various Provincial Governments either cut into goods which are the subject matter of imports or exports, or cut into what is called inter-State trade or commerce. It is agreed that this kind of chaos ought not to be allowed and that while the provinces may be free to levy the sales tax there ought to be some regulations whereby the sales tax levied by the provinces would be confined within the legitimate limits which are intended to be covered by the sales tax. It is, therefore, felt that there ought to be some specific provisions laying down certain limitations on the power of the provinces to levy sales tax.

The first thing that I would like to point out to the House is that there are certain provisions in this article 264A which are merely reproductions of the different parts of the Constitution. For instance, in sub-clause *(1)* of article 264A as proposed by me, sub-clause *(b)* is merely a reproduction of the article contained in the Constitution, the entry in the Legislative List that taxation of imports and exports shall be the exclusive province of the Central Government. Consequently so far as sub-clause *(1)(b)* is concerned there cannot be any dispute that this is in any sense an invasion of the right of provinces to levy as sales tax.

Similarly, sub-clause *(2)* is merely a reproduction of Part XA which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause *(2)* is concerned there is really nothing new in it. It merely says that it any sales tax is imposed it shall not be in conflict with the provisions of Part XA.

With regard to sub-clause *(3)* it has also been agreed that there are certain commodities which are so essential for the life of the community throughout India that they should not be subject to sales tax by the province in which they are to be found. Therefore it was felt that if there was any such article which was essential for the life of the community throughout India, then it is necessary that, before the province concerned levies any tax upon such a commodity, the law made by the province should have the assent of the President so that it would be possible for the President and the Central Government to see that no hardship is created by the particular levy proposed by a particular province.

The proviso to sub-clause *(2)* is also important and the attention of the House might be drawn to it. It is quite true that some of the sales taxes which have been levied by the provinces do not quite conform to the

provisions contained in article 264A. They probably go beyond the provisions. It is therefore felt that when the rule of law as embodied in the Constitution comes into force all laws which are inconsistent with the provisions of the Constitution shall stand abrogated. On the date of the inauguration of the Constitution this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. It is therefore proposed as an explanation to the general provisions of the Constitution that notwithstanding the inconsistency or any sales tax imposed by any province with the provisions of article 264A, such a law will continue in operation until the 31st day of March 1951, that is to say, we practically propose to give the provinces a few months more to make such adjustments as they can and must in order to bring their law into conformity with the provisions of this article.

I do not think any further explanation is necessary so far as my amendment is concerned but if any point is raised I shall be very glad to say something in reply to it when I reply to the debate.

* * * * *

***Shri Mahavir Tyagi :** ...There are so many defects in the present system of sales tax. Now, in Delhi, there is no sales tax; in the United Provinces, there is a sales tax on motor car, radios, on bicycles and other things. Whenever any citizen in Meerut wants a motor car or a bicycle, he does not go to the local shop there. The local agency suffers. He comes to Delhi. I see Dr. Ambedkar beckoning me to keep quite; he is using undue influence.

The Honourable Dr. B. R. Ambedkar : I have followed the point.

Shri Mahavir Tyagi : Have you followed it ? Have you also appreciated it ? Are you prepared to accommodate me ? You have got the delegates of the People behind you. Dr. Ambedkar, I can assure you, if you are just, if you recognise justice, you might become later on the Supreme Judge of India in your life, if you do justice to the citizen. I submit, Sir, this is the manner in which that tax is being levied....

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†The Honourable Dr. B. R. Ambedkar : Sir, there are three amendments before the House. The first is the amendment of my Friend Prof. Shibban Lal Saxena. According to his amendment, what he proposes is that the power practically to levy sales tax should be with the Parliament.

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*CAD, Vol. X, 16th October 1949, pp. 330-331.

†*Ibid.,* pp. 339-340.

There are two fundamental objections to this proposal. In the first place, this matter was canvassed at various times between the Provincial Premiers and the Finance Department of the Government of India in which the proposal was made that in order to remove the difficulties that arise in the levy of the sales tax it would be better if the tax was levied and collected by the Centre and distributed among the Provinces either according to some accepted principles or on the basis of a report made by some Commission. Fortunately or unfortunately, the Provincial premisers were to a man opposed to this principle and I think, Sir, that their decision was right from my point of view.

Although I am prepared to say that the financial system which has been laid down in the scheme of the Draft Constitution is better than any other special system that I know of. I think it must be said that it suffers from one defect. That defect is that the Provinces are very largely dependent for their resources upon the grants made to them by the Centre. As well as know, one of the methods by which a responsible Government works is the power vested in the Legislature to throw out a Money Bill. Under the scheme that we have proposed; a Money Bill in the Province must be of a very meagre sort. The taxes that they could directly levy are of a very minor character and the Legislature may not be in a position to use this usual method of recording its "no confidence" in the Government by refusing taxes. I think, therefore, that while a large number of resources on which the Provinces depend have been concentrated in the Centre, it is from the point of view of constitutional government desirable at least to leave one important source of revenue with the Provinces. Therefore, I think that the proposal to leave the sales tax in the hands of the Provinces, from that point of view, is a very justifiable thing. That being so, I think the amendment of my Friend Prof. Shibban Lal Saxena falls to the ground.

With regard to the amendment of my Friend Mr. Tyagi, I would like to say that I am in great sympathy with what he has said. There is no doubt about it that the sales tax when it began in 1937 was an insignificant source of revenue. I have examined the figures so far as Bombay and Madras are concerned. The tax in the year 1937 in Madras was somewhere about Rs. 2.35 crores. Today it is very nearly Rs. 14 crores. With regard to Bombay the same is the situation, namely, that the tax about Rs. 3.5 crores in 1937 and today it is somewhere in the neighbourhood of Rs. 14 crores. This must be admitted as a very enormous increase and I do not think that it is desirable to play with the sales tax for the purpose of

raising revenue for the simple reason that a taxation system can be altered on the basis, so far as I know, of two principles. One is the largest equity between the different classes. If one class is taxed more than another class it is justifiable to employ the taxation system to equalise the burden.

The second important principle which, I think, is accepted all over the world is that no taxation system should be so manipulated as to lower the standard of living of the people, and I have not the slightest doubt in my mind that the sales tax has a very intimate connection with the standard of living of the people of the province. But, with all the sympathy that I have with my friend, I again find that if his amendment was accepted it would mean that the power of the provinces to levy the sales tax would not be free and unfettered. It would be subject to a ceiling fixed by Parliament. It seems to me that if we permit the sales tax to be levied by the provinces, then the provinces must be free to adjust the rate of the sales tax to the changing situation of the province, and, therefore, a ceiling from the Centre would be a great handicap in the working of the sales tax. I have, no doubt that my Friend Mr. Tyagi, if he goes into the Provincial legislature, will carry his ideas through by telling the Provincial Governments that the sales tax has an important effect on the standard of living of the people, and therefore, they ought to be very careful as to where they fix the pitch.

Shri Mahavir Tyagi : Have I become so inconvenient to you ?

The Honourable Dr. B. R. Ambedkar : Not at all. If I were a Premier, I would have taken the same attitude as you have taken.

Now, coming to the amendment of my honourable Friend Pandit Kunzru, I am inclined to think that the purpose of his amendment is practically carried out in the explanation to sub-clause (1) where also we have emphasised the fact that the sales tax in its fundamental character must be a tax on consumption and I do not think that his amendment is going to improve matters very much.

There is only one point, I think, about which I should like to say a word. There are, I know, some friends who do not like the phraseology in sub-clause *(1),* in so far as it applies, "in the course of export and in the course of import." Now, the Drafting Committee has spent a great deal of time in order to choose the exact phraseology. So far as they are concerned, they are satisfied that the phraseology is as good as could be invented. But I am prepared to say that the Drafting Committee will further examine this particular phraseology in order to see whether some other phraseology could not be substituted, so as to remove the point of

criticism which has been levelled against this part of the article. Sir, I hope the House will now accept the amendment.

Mr. President: Before putting the proposition moved by Dr. Ambedkar to vote, I desire to say a few words, particularly because I see in front of me the Honourable the Finance Minister. I do not wish to say anything either in support of or in opposition to the article which has been moved, but I desire to point out that there is a considerable feeling in the provinces that their sources of revenue have been curtailed a great deal, and also, particularly among the provinces, which are poor, that the distribution of the income-tax is not such as to give them satisfaction. I desire to ask the Finance Minister to bear this in mind when he comes to consider the question of the distribution of the income-tax, so that it may not be said that the policy of the Government of India is such as to give more to those who have much and to take away the little from those who have little.

I shall now put the various amendments to vote.

All amendments were negatived.

[Original proposition moved by Dr. Ambedkar was adopted. Article 264-A, as amended, was added to the constitution.]

***The Honourable Dr. B. R. Ambedkar :** I would like you to take up article 280-A.

Pandit Hirday Nath Kunzru : I strongly object to that article being taken up today. I received the amendment only this morning. The matter with which it deals is a very important one and we should be allowed some time to consider it and to put forward amendments, if we want to do so.

Mr. Naziruddin Ahmad : In addition, this article proposes to introduce a new kind of emergency unknown in any system.

The Honourable Dr. B. R. Ambedkar : Sir, I hope you will not allow these technicalities to stand in the way of the business of the House. Now, even if the honourable Member got the amendment at nine o'clock, from nine to twelve he had time. I do not think there is anything obscure in this amendment. A man of much less intelligence than my honourable Friend Pandit Kunzru could understand it on first reading. I have no doubt about it.

Pandit Hirday Nath Kunzru : Sir, it is a very important matter and Dr. Ambedkar's impatience and rudeness should not be allowed to override the rights of the Members—rights which they clearly enjoy under the rules. I demand, Sir, that we should be given more time to consider

*CAD, Vol. X, 16th October 1949, p. 342.

this amendment notwithstanding the obvious desire of Dr. Ambedkar to rush the amendment through the House.

Mr. President : I would suggest that we go in the order in which it is on the agenda and take up article 274-DD.

The Honourable Dr. B. R. Ambedkar : I am prepared to do that, Sir, but I must say that we are so much pressed for time that I do not think that these technicalities ought to be given more importance than they deserve.

Pandit Hirday Nath Kunzru : It is a pity that the Chairman of the Drafting Committee, who, by virtue of his position may be supposed to appreciate the rights of others, makes light of them.

ARTICLE 274-DD.

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted :—

'274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of institution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and Government of that State, continue to levy and collect such tax of duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Power of certain States in Part III of the First Schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.' "

Sir, this new article is a mere consequential amendment to article 258, which the House has already accepted, whereby the power is given to the Government of India to enter into agreement with States in Part III for the purposes of making certain financial adjustments during a temporary period.

[Article 274DD was adopted and added to the constitution.]

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*CAD, Vol. X, 16th October 1949, p. 342.

†*Ibid.,*

***The Honourable Dr. B. R. Ambedkar** : If my honourable Friend Pandit Kunzru has now no objection we may proceed with the new article 280A. He has had another half an hour.

Mr. President : I think we had better take it up a little later.

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ARTICLE 280A

†The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 280, the following new article be inserted :

'280-A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

Provisions as to financial emergency.

(2) The provisions of clause (2) of article 275 of this constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) during the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial properiety as may be specified in the directions, and to the giving of such other directions as the President may been necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all money bills or other bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.' "

Sir, having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the anxiety of some such provision as is embodied in this new article 280A and I therefore, do not propose to spend any time in giving any justification for the inclusion of this article in our Draft Constitution. All that I propose to say is this, that this article more or less follows the pattern

*CAD, Vol. X, 16th October 1949, p. 345.

†*Ibid.,* p. 361.

of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which give the power to the President to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American people as a result of the great depression from which they were suffering. The reason why, for instance, we have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation passed by the President was challenged in the Supreme Court and the Supreme Court declared the whole of the legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth.

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***Mr. President :** Have you anything to say ?

The Honourable Dr. B. R. Ambedkar : If you think it is necessary, I will speak.

Mr. President : No, no. I do not say so. Then I will put the amendment to the vote.

Shri H. V. Kamath : I suggest that Dr. Ambedkar might consider the change of the wording from "threatened" to "gravely threatened."

Mr. President : You did make your suggestion. He will consider whether it is worth considering. I do not think I should allow you to make a second speech in the form of a suggestion to Dr. Ambedkar.

Srijut Rohini Kumar Chaudhuri (Assam : General) **:** I wanted to make my only speech.

Mr. President : But I have already closed the debate.

[All 8 amendments were negatived. Original amendment of Dr. Ambedkar was adopted, Article 280A was added to the Constitution.]

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†Shri B. Das : I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be dissolved at once. We have got the Income-tax tribunal which is the final authority.

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*CAD, Vol. X, 16th October 1949, pp. 372.

†*Ibid., p.* 378-80.

The Honourable Dr. B. R. Ambedkar : Are they relevant to this discussion ? How does the Income-tax tribunal come here ?

Shri B. Das : In this article it is stated :—

> "The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

I only wish to be assured by you that the 'tribunal' does not mean the 'Income-tax tribunal'.

The Honourable Dr. B. R. Ambedkar : You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

Pandit Thakur Das Bhargava : Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows :

> "Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Armed Forces which countenance the judgements etc. by courts constituted under those Acts and the accused in those cases are the civil an population or military personnel accused of civil offences. In regard to, say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I, therefore, think that this clause is too widely worded and needs amendment.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, in view of the observation made by my honourable Friend, Prof. Shibban Lal Saksena, it has become incumbent upon me to say something in relation to me proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is still correct and there is no doubt about it in my mind, but what I forgot to say is this : That according to the rulings of our High Courts as well as the rulings of the British Courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute, will not exercise that jurisdiction in order to disturb any

finding or decision given or order made by the Court-martial. I do not wish to go into the reason why the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction; but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British Courts—the House of Lords, the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them—there would be no necessity for clause *(2);* but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause *(2)* has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause *(2)* of article 112.

I should, however, like to say this that clause *(2)* does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause *(2)* of article 112, it would still be open to the Supreme court or to the High Court to exercise Jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High

Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seemed to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhva raised the question that sometimes when a member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to be prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

Shri Mahavir Tyagi : Can he have two punishments for one crime ?

The Honourable Dr. B. R. Ambedkar : Oh, yes.

Shri R. K. Sidhva : Why not make it clear ?

The Honourable Dr. B. R. Ambedkar : It is quite clear. Section 2 of the Indian Penal Code says : "every person". "Every person" means High or low, armed or unarmed.

Mr. President : Mr. T. T. Krishnamachari, would you like to say anything after this ?

Shri T. T. Krishnamachari : No, Sir.

Mr. President : I shall put the amendments to vote.

[Amendment was negatived.]

I shall put article 112 as proposed in amendment No. 421. The question is :

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted :—

'112. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Special leave to appeal by the Supreme Court.

(2) Nothing in clause *(1)* of this article shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The motion was adopted.

Article 112, as amended, was added to the Constitution.

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***Mr. President :** Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

The Honourable Shri K. Santhanam : But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words "made by Parliament" are absolutely essential to make the meaning precise and clear.

The Honourable Dr. B. R. Ambedkar (Bombay : general) **:** Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters with respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause *(b)* of clause *(1)* of article 59 cannot go beyond the power of Parliament to make laws.

*CAD, Vol. X, 17th October 1949, p. 390.

The Honourable Shri K. Santhanam : The article does not limit it only to those laws; it can also extend further.

The Honourable Dr. B. R. Ambedkar : No, it cannot extend further. The necessity for bringing an amendment in sub-clause *(b)* is this; that the executive power of the centre extends not only to matters enumerated in List I, but may also extend to matters enumerated in List III, and the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam's amendment is absolutely unnecessary and out of place because article 60 covers the point.

(Amendment of Mr. Santhanam was negatived.)

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***The Honourable Dr. B. R. Ambedkar :** The clause moved by my Friend Mr. Krishnamachari is of old standing. It occurs in the Instrument of Instructions issued to the Governor of the provinces under the Government of India Act, 1935.

Paragraph 17 of the Instrument of Instructions says :

> "Without prejudice to the generality of his powers as to reservation of Bills, our Government shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, *i.e.*
>
> *(b)* any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act, designed to fulfil."

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unneccessary to have any such schedule containing instructions to the Governors of the States in Part I, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Courts are placed under the Centre as well as the Provinces. So far as the organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Provinces have no power either to alter the organization of the High Court or the

*CAD, Vol. X, 17th October 1949, pp. 393-394.

territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislative to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the entries contained in List II, for instance, debt concellation or any such matter, it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath : What about my suggestion to simplify the language?

The Honourable Dr. B. R. Ambedkar : I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath : All right : Do it later on.

Mr. President : I will now put it to vote.

(Amendment of Mr. T. T. Krishmachari)

The question is :

"That to article 175 the following proviso be added :

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.' "

The amendment was adopted.

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***Mr. President :** Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, this article is to be read along with article 8.

Article 8 says—

> "All laws in force immediately before the commencement of this Constitution in the teritory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law; some of the heads mentioned here such as libel, slander, defamation, security of State, etc., are matters placed in the Concurrent List so that if there was any very great variation among the laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such unformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam : But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B. R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact. Pandit Thakur Das Bhargavas's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether I will put them separately. First I put Mr. Krishnamachari's amendment to vote.

The question as :

> "That in clause *(2)* of article 13, after the word 'defamation' the words 'contempt of court', be inserted"

*CAD, Vol. X, 17th October 1949, p. 402.

The amendment was adopted.

Pandit Thakur Das Bhargava's amendment was negatived.

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***Mr. President :** Then we take up the new article 302AAA, *i.e.* amendment No. 450, Mr. Santhanam has made a suggestion that in order to complete the amendment which has just been passed, "Contempt of Court" must be included in the Concurrent List, and I think it is consequential and we had better take that thing.

The Honourable Dr. B. R. Ambedkar : I will move an amendment straightaway, Sir, I move :

"That after entry 15 in the Concurrent List, the following entry be added :

"15A. Contempt of Court"

Mr. President : I do not think there can be any objection to that.

Mr. Naziruddin Ahmed : There may be many more such things.

Mr. President : May be, but they will come up in time. So, I will put this to vote.

The above amendment was adopted.

Entry 15A was added to the Concurrent List.

NEW ARTICLE 302AAA

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I think my Friend Mr. Sidhva has entirely misunderstood the position. If he will refer to List II, in Schedule Seven, items 30 and 35 which relate to the matters covered by the amendment moved by my Friend Shri T. T. Krishnamachari, he will see that the power of legislation given to the Centre under items 30 and 35 is of a very limited character. The power given under item 30 is for the purpose of regulation and organisation of air traffic. The power given under 35 is for the purpose of delimitation of the Constitution and the powers of port authorities. He will very readily see that, so far as the territory covered by aerodromes or air ports and ports is concerned, it is put of the territory of the province and concequently any law made by the State is applicable to the area covered by the aerodrome or the port. These entries 30 and 35 do not give the Centre power to legislate for all matters which lie within the purview of the Central Government under the entries. The powers are limited. Therefore the proposal in this article is this : that while it retains areas covered by the aerodromes and by the ports

*CAD, Vol. X, 17th October 1949, p. 403.

†*Ibid.,* pp. 405-406.

as part of the area of the provinces, it does not exclude them—it retains the power of the States to make laws under any of the items contained in List II so as to be applicable to the areas covered by the aerodromes and the areas covered by the ports. What the amendment says is that if the Central Government think that for any particular reason such as for instance sanitation, quarantine, etc., a law is made by the State within whose jurisdiction a particular aerodrome or port is located, then it will be open for the President to say that this particular law of the State shall apply to the aerodrome or to the port subject to this, that or the other notification. Beyond that, there is no invasion on the part of the Centre over the dominion of the States in respect of framing laws relating to entries contained in List II, so far as aerodromes and ports are concerned. I hope my Friend, Mr. Sidhva, will now withdraw his objection.

Mr. President : I shall now put amendment No. 450 to the vote. The question is :

"That after article 302AA, the following new article be inserted :

"302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in notification—

Special provisions as to major ports and aerodromes

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :—

(a) 'major port' means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;

(b) 'aerodrome' means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.' "

The motion was adopted.

Article 302AAA was added to the Constitution.

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***Mr. President :** Now I have to put the amendment moved by Mr. Kamath to vote. There is no alternative left to me.

The Honourable Dr. B. R. Ambedkar : He may be asked to withdraw it.

*CAD, Vol. X, 17th October 1949, p. 442.

Mr. President : I suggested to him not to move it. It rests with him to withdraw it.

Shri H. V. Kamath : I am not withdrawing it.

Mr. President : He says he does not withdraw it.

The question is :

"That in amendment No. 2 of the List of Amendments (Volume I), the following be substituted for the proposed preamble :—

"In the name of the God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizens

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship ;

Equality of status and of opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity of the nation ;

In our Constituent Assembly do hereby adopt, enact give to ourselves the Constitution.' "

Shri H. V. Kamath : I claim a division.

Pandit Govind Malaviya : I also want a division on this question.

Maulana Hasrat Mohani : I also want a division on this question.

Pandit Govind Malaviya : I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The assembly divided by show of lands.

Ayes: 41

None; 68

The amendment was nagatived.

Honourable Members : Closure, closure.

***Mr. President :** I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words "from whom is derived all power and authority". The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, *viz,* that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

*CAD, Vol. X, 17th October 1949, pp. 454-456.

Maulana Hasrat Mohani : Then why don't you accept it ?

The Honourable Dr. B. R. Ambedkar : I propose to show now, by a detailed examination; that my contention is true.

Sir, this amendment, if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory, if I may say so. Now, the declaratory part consists of the following phrase : 'We the people of India, in our Constituent Assembly, this day, this month…….. do hereby adopt, enact and give to ourselves this Constitution.' Those Members of the House who are worried as to whether this Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words 'We the people of India in our Constituent Assembly, this day, do hereby adopt enact and give to ourselves this constitution' Reading it in that fashion…….*

Shri Mahavir Tyagi : Where do the people come in ? It is the Constituent Assembly Members that come in.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my Friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my Friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum that is quite a different question which has nothing to do with the point which we are debating whether this Constitution should have validity if it was passed by this Constituent Assembly or whether it will have validity only when it is passed on a referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

*Dots indicate interruption.

The point under debate is this : Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people ? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says : "We the people of the United States"— I am not reading the other parts— "We the people of United States do ordain and establish this Constitution for the United States of America." As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met at Philadelphia to draw up the Constitution. (Honourable Members : There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand, unless a man was an obsolute pedant, that a body of people 292 in number, representing this vast continent, in their representative capacity, could not say that they are acting in the name of the people of this country. (*'Hear, hear'*)

Maulana Hasrat Mohani : I do not think, it is only a community.

The Honourable Dr. B. R. Ambedkar : That is a different matter, Maulana. I cannot deal with that. Therefore, so far as that contention is concerned, I submit that there need be no ground for any kind of fear or apprehension. No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament. Nobody has the slightest desire for that. In fact we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this Constitution. There is no difference of opinion between any Member of this House and any Member of the Drafting Committee so far as that is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension that, on account of the fact that earlier this year the Constituent Assembly joined in making a declaration that this country will be associated with the British Commonwealth, that association has in some way derogated from the sovereignty of the people. Sir, I do not think that is a right view to take Every indepedent country must have kind of a treaty with some other country. Because one sovereign country makes a treaty with another sovereign country, that country does not become less

sovereign on that account. (Interruption). I am taking the worst example. I know that some people have that sort of fear. (Interruption).

Shrimati Purnima Banerji : May I, sir.....

Mr. President : Let Dr. Ambedkar proceed. He has not insinuated anything.

The Honourable Dr. B. R. Ambedkar : I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.

Therefore I am not prepared to accept the amendment. I do not want to say anything about the text of the amendment. Probably the amendment is somewhat worded, if I may say so with all respect in a form which would not fit in the Preamble as we have drafted, and therefore on both these grounds I think there is no justification for altering the language which has been used by the Drafting Committee.

[The amendment was negatived. The motion was adopted and The Preamble was added to the Constitution.]

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Mr. President : We are now coming to the close of this session. Before I actually adjourn the House, there are certain things which have to be settled at this stage. One of the questions which have to be decided is the next session for the Third Reading of the Constitution, and on previous occasions the House gave me permission to call it at any time I thought necessary, and this time also I suppose the House would give me that permission, but I would ask Mr. Satyanarayan Sinha to move a formal resolution to that effect.

The Honourable Shri Satyanarayan Sinha : Sir, I move :

"That the Assembly do adjourn until such day in November 1949 as the President may fix".

Mr. President : The question is :

"That the Assembly do adjourn until such day in November 1949 as the President may fix".

The motion was adopted.

Mr. President : I think we have done with all the amendments, of which we had notice, and I need not say anything more about them. Now that we have concluded the second Reading of the Constitution, by virtue of the powers vested in me under Rule 38-R as recently passed by this House, I shall refer the Draft Constitution with the amendments to the Drafting Committee in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes,

and for recommending such formal or consequential or necessary amendments of the Constitution as may be required. This has to be done to complete the work and I do that by virtue of the authority which you have given me, with this, we now adjourn till such date as I may announce.

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The Constituent Assembly then adjourned to a date in November 1949 to be fixed by the President.

TAKING THE PLEDGE AND SIGNING THE REGISTER .

***Mr. President :** I understand that there are two Members who have to take the Pledge and sign the Register.

The following Member took the pledge and signed the register :—

Shri M. R. Masani (Bombay General).

Mr. President : We have now to take up the consideration of the Draft Constitution.

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†The Honourable Dr. B. R. Ambedkar (Bombay General) **:** Mr. President, Sir, I have to present the report of the Drafting Committee together with the Draft Constitution of India as revised by the Committee under rule 38-R of the Constituent Assembly rules. Sir, I move—

> "That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration."

Sir, I do not propose to make any very long statement of the report or on the recommendations made by the Drafting Committee for the purpose of revising or altering the articles as they were passed at the last session of this Assembly. The only thing that I wish to say is that I would not like to apologise to the House for the long list of corrigenda which has been placed before the House or the supplementary list of amendments included in list II. In my judgement it would have been much better if the Drafting Committee had been able to avoid this long list of corrigenda and the supplementary list of amendments contained in List II, but the House will realise the stress of time under which the Drafting Committee had been working. It is within the knowledge of all the Members of the House that the last session of the Constituent Assembly ended on the 17th of October. Today is the 14th of November. Obviously there was not even one full month available for the Drafting Committee to carry out this huge

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*CAD, Official Report, Vol. X, 14th November 1949, p. 459

†*Ibid.,* pp. 462-464.

task of examining not less than 395 articles which are now part of the Constitution. As I said, the Drafting Committee had not even one month, but that even is not a correct statement, because according to Rule 38-R and other rules, the Drafting Committee was required to circulate the Draft Constitution as revised by them five days before this session of the House. As a matter of fact the Constitution was circulated on the 6th of November, practically eight days before the commencement of this session. Consequently the time available for the Drafting Committee was shorter by eight days. Again, it must be taken into consideration that in order to enable the Drafting Committee to send out the Draft Constitution in time, they had to hand over the draft they had prepared to the printer some days in advance to be able to obtain the copies some time before they were actually despatched. The draft was handed over to the printer on the 4th of November. It will be seen that the printer had only one day practically to carry out the alterations and the amendments suggested by the Drafting Committee. It is impossible either for the printer or for the Drafting Committe or the gentleman in charge of proof corrections to produce a correct copy of such a huge document containing 395 articles within one day.

That in my judgement, is a sufficient justification for the long corrigenda which the Drafting Committee had to issue in order to draw attention to the omissions and the mistakes which had been left uncorrected in the copy as was presented to them by the printer on the 5th. Deducting all these days, it will be noticed that the Drafting Committee had barely ten days left to them to carry out this huge task. It is this shortness of time, practically ten days, which in my judgement justifies the issue of the second list of amendments now embodied in List II. If the Drafting Committee had a longer time to consider this matter they would have been undoubtedly in a position to avoid either the issue of the corrigenda or the Supplementary List of Amendments, and I hope that the House will forgive such trouble as is likely to be caused to them by having to refer to the corrigenda and to the Second List of Amendments for which the Drafting Committee is responsible.

Sir, it is unnecessary for me to discuss at this stage the nature of the amendments and changes proposed by the Drafting Committee in the Draft Constitution. The nature of the changes have been indicated in paragraph 2 of the Report. It will be seen that there are really three classes of changes which the Drafting Committee has made. The first change is merely renumbering of articles, clauses, sub-clauses and the

revision of punctuation. This has been done largely because it was felt that the articles as they emerged from the last session of the Constituent Assembly were scattered in different places and could not be grouped together under one head of subject-matter. It was therefore held by the Drafting Committee that in order to give the reader and the Members of the House a complete idea as to what the articles relating to any particular subject-matter are, it was necessary to transpose certain articles from one Part to another Part, from one Chapter to another Chapter so that they may be conveniently grouped together and assembled for a better understanding and a better presentation of the subject-matter of the Constitution. The second set of changes as are described in the report are purely formal and consequential, such as the omission of the words "of this Constitution" which occurs in the draft articles at various places. Sometimes capital letters had been printed in small type and that correction had to be made. Other alterations such as reference to Ruler and Rajpramukh had to be made because these changes were made towards the end when we were discussing the clauses relating to definition. The other changes may be compendiously called 'necessary alterations.' Now those necessary alterations fall into two classes, alterations which do not involve a substantial change in the article itself. These are alterations which are necessary because it was found that in terms of the language used when the articles were passed in the last session, the meaning of some articles was not clear, or there was some lacuna left which had to be made good. That the Drafting Committee has endeavoured to do without making any substantial change in the content of the articles affected by those changes. There are, however, other articles where also necessary changes have been made, but those necessary changes are changes which to some extent involve substantial change. The Drafting Committee felt that it was necessary to make these changes although they were substantial, because if such substantial changes were not made there would remain in the article as passed in the last session various defects and various omissions which it was undesirable to allow to continue, and the Drafting Committee has therefore taken upon itself the responsibility of suggesting such changes which are referred to in sub-clause *(d)* of paragraph 2 and I hope that this House will find it agreeable to accept those changes. As to the substantial alterations that have been made, in regard to some of them sufficient explanation has been given in paragraph 4, and I need not repeate what has been said in the report in justification of those changes.

Sir, I do not think it is necessary for me to add anything to the report of the Drafting Committee and I hope that the House will be able to accept the report as well as the changes recommended by the Drafting Committee both in the report as well as in List II which has already been circulated to the Members of the House.

AMENDMENTS OF ARTICLES

Mr. President: Dr. Ambedkar has presented the report and the motion now before the House is that the amendments recommended by the Drafting Committee, and the Draft Constitution be taken into consideration....*

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†Mr. President : As I understand the point of order which you are raising Pandit Kunzru, it is this, that this article as it is now proposed goes beyond the decisions of this House and it is not a necessary consequence of any decision which has been taken.

The Honourable Dr. B. R. Ambedkar : (Bombay : General): The only question on this point of order that could arise is whether the change proposed by the Drafting Committee in article 365 is a consequential change. It is quite clear in the judgment of the Drafting Committee that this is not only necessary but consequents, for the simple reason that, once there is power given to the Union Government to issue directions to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is failure to carry out those directions is practically negativing the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a nugatory right which has no meaning, no sense and no substance. That is the reason why the Drafting Committee regarded that such an article was necessary on the ground that it was a consequential article.

But, Sir, I propose to say something more which will show that the Drafting Committee has really not travelled beyond the provisions as they were passed at the last session of the Constituent Assembly. I would ask my honourable Freind Pandit Kunzru to refer to article 280-A, clause *(5),* and article 306-B. Article 280-A, clause *(5),* and the provisions contained in the concluding portion of the main part of 306-B are now

*Dots indicate interruption.

†CAD, Official Report, Vol. X, 15th November 1949, pp. 507-509

embodied in article 365. To that extent, article 365 cannot be regarded as a new article interpolated by the Drafting committee. If my honourable Friend....*

Pandit Hirday Nath Kunzru : May I interrupt my honourable Friend ? Article 306-B relates only to the power of the Central Executive over Governments of the States included in Part B of the first Schedule. My honourable Friend has extended that power of the Central Executive over all State Governments.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend would allow me to complete, I would like to read article 280-A, not of the present draft, but of the old, as was passed at the second reading. These are financial provisions. Clause *(5)* of the article 280-A says : "Any failure to comply with any directions given under clause *(3)* of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." Therefore, article 365 merely seeks to incorporate this clause *(5)* of the article 280-A. My honourable Friend, If he refers again to article 306-B....†

Pandit Hirday Nath Kunzru : Will my honourable Friend allow me to interrupt him again ?

The Honourable Dr. B. R. Ambedkar : I think it would be better if he speaks after I have completed my argument. If he refers to article 306-B which deals again with the power to issue instructions and directions to States in Part III which are now States in Part-B of the First Schedule, he will see that the last portion says : "any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this "Constitution." Therefore my contention is that article 365 does not introduce any new principle at all. It merely gathers together or assembles the different sections in which the power to issue directions is given and states in general terms that wherever power is given to issue directions and there is a failure, it would be open to the President to deem that a situation has arisen in which there has been a failure to carry out the provisions of this Constitution. The only articles in which such a power to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution was not specifically mentioned were articles 256 and 257. It merely said that the Centre had the power to give directions. Therefore, if there is at all any extention of

*Dots indicate interruption.

†Ibid.,

the principle embodied in articles 280-A(5) and 306-B in the new article 365 it is with regard to some of the articles in which this fact was not positively stated. My submission is that when the Constitution does say that with respect to certain articles where the power to issue directions is given, the president shall be entitled or it shall be lawful for the President to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution, it seems difficult to justify that certain other articles in which also the power to issue directions has been given should have been omitted from the purview of article 365. The object of article 365 is to make the thing complete and to extend the express provision contained in article 280-A and article 306-B which have been passed by the House already. Therefore, I submit that there is no innovation of any kind at all. It merely makes good the omission which had taken place with regard to some of the article which are, I submit, on the same footing as article 280-A, clause (5) and 306-B.

Pandit Hirday Nath Kunzru : May I point out the reference by Dr. Ambedkar to article 280-A and 306-B in the Draft Constitution as amended by the Constituent Assembly is not to the point ? Article 280-A refers only to financial emergencies. The power conferred on the President under that article can be exercised only when he has declared that the financial stability or credit of India or any part thereof is threatened. The scope of that article therefore is very limited. There is another article in the Constitution which enables the President to issue a proclamation of emergency. Such a proclamation can be issued only when India is threatened by war or internal disturbances. But, these articles do not justify the extension of the power that the Central Executive may exercise in certain emergencies to all cases. Article 306-B is definitely limited to the case of State mentioned in Part B of the First Schedule. Such a provision was not made in the Constitution in refererence to States mentioned in Part A of the First Schedule. Dr. Ambedkar has himself admitted that he has extended the provisions of article 306-B and article 280-A. He has generalised them and brought even the States mentioned in Part A of the First Schedule under the wider exercise of the powers of the Central Executive referred to in articles 306-B and 280-A. I submit, Sir, that the analogy is unjustified and, in any case, incomplete. Whatever the Assembly may have done in the case of States mentioned in Part B of the First Schedule, it does not follow from this that the same provisions must be extended to the States mentioned in Part A of the first Schedule. I submit, therefore, that the language of article 365 goes beyond the

express decisions of the Constituent Assembly. A certain difference has to be maintained between the States mentioned in Part A of the First Schedule and part B of the First Schedule. The difference cannot be obliterated simply because the Drafting Committee desires that they should be removed.

Pandit Balkrishna Sharma (United Provinces : General)**:** May I offer some remarks ?

Mr. President : On the point of order ?

Pandit Balkrishna Sharma : Yes, Sir.

Mr. President : Dr. Ambedkar has already replied.

The Honourable Dr. B. R. Ambedkar : I would like to draw your attention that even in the present Government of India Act there is a provision to the same effect contained in section 126, which empowers the Governor-General to give directions to the provinces and if it appears to the Governor-General that effect has not been given to any such directions he can in his discretion issue orders to the Governor who was to act in his discretion in the matter of carrying out the directions given by the Governor-General. This provision, if I may say so, is very necessary because we all know—those of us who were Ministers during the time of the war—how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions. This is a very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the Government.

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***Pandit Hirday Nath Kunzru :** ...I should like Sir, to refer to one more point before I sit down. The Drafting Committee has referred to a number of articles in this Constitution in justfication of the language of article 365. Now, one of the articles so referred to this article 371 which corresponds to the old article 306-B. Had that article been omitted, then there might have been some justification for article 365, but article 306-B has not been omitted from this Constitution. It figures as article 371 but I have not been able to compare the languages of article 371 in the Constitution as revised by the Drafting Committee and article 306-B in the Constitution as amended by the Constituent Assembly last month....

*CAD, Official Report, Vol. X, 15th November 1949, p. 519.

The Honourable Dr. B. R. Ambedkar: Before my honourable Friend proceeds further, I would like to point out that the words "and any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution" have been omitted from article 371 which corresponds to the original article 306-B.

Pandit Hirday Nath Kunzru : Then I stand corrected in that respect. If article 365 is deleted as proposed by my honourable Friend, Pandit Thakur Das Bhargava, then the Drafting Committee can revert to the old draft of article 306-B. Apart from this, Sir, since this question has been referred to by Dr. Ambedkar, I should like to point out that article 306-B in the Constitution as amended by the Constituent Assembly, which corresponds to article 371 in the present Draft of the Constitution that we are discussing now, is of limited duration. It will remain in operation for ten years only, and this provision cannot be referred to as a justification for introducing a new provision in the Constitution that will be permanent.

Sir, I was referring to articles 353 and 360 when my honourable Friend, Dr. Ambedkar, pointed out to me the change that had been made in the draft of article 306-B.

Shri H. V. Kamath : May I point out that article 371 provides for a period longer than ten years also ?

The Honourable Dr. B. R. Ambedkar : "Notwithstanding anything in this Constitution 'during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may be law provide..." etc.‡

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***Shri Mahavir Tyagi :** Sir, I hope President means the President of the Constituent Assembly, and not the 'Governmental President'.

Mr. President: There is no other President except the President of the Union.

The Honourable Dr. B. R. Ambedkar : I propose to explain this matter in my reply. Mr. Sidhva may conclude his remarks.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in sub-clause (b) of clause (1) of article 72, for the words 'offence under any law' the words 'offence against any law' be substituted."

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*CAD, Official Report, Vol. X, 15th November 1949, p. 525.

†*Ibid.,* p. 536.

‡Dots indicate interruption.

***Shri R. K. Sidhva :** If we get an answer to any doubts it will be helpful.

The Honourable Dr. B. R. Ambedkar : Sir, If my friend Mr. Sidhva were to refer to clause (12) of article 366 in the draft as revised by the Drafting Committee, he will notice that there is really nothing new in sub-clause (*3*) of article 367 which is the subject-matter of amendment No. 562-A. Article 366 is a definition article and clause (12) there attempts to define what a foreign State is within the meaning of the Constitution. It was felt that clause (12) of article 366 as passed by the Assembly was rather cryptic and too succinct and that it was desirable to give it a more elaborate shape and form. Consequently the Drafting Committee thought that the best way would be to delete clause (12) of article 366. This is done by amendment No. 497 and it is sought to be replaced now by the present amendment No. 562-A. In the draft as presented to the House with the report the main provision was that it was open to the President to declare by an order that a certain country was not a foreign State so far as India was concerned. The main part of clause *(3)* of article 367 is just the same. The only thing that has been added is that Parliament may legislate on this subject and, while legislating, endow the President with power to proclaim by an order what country is not a foreign State. It was further felt by the Drafting Committee that it was not desirable to confer this power in such rigid terms as would follow from the proviso if the words "for such purposes as may be specified in the order" were not there. The President and Parliament may then be confronted with two inescapable alternatives, either to say that a foreign country was a foreign State or to say that a certain country was not a foreign State with the result that the subjects of the country which is declared not to be a foreign State would become automatically citizens of India and be entitled to all the rights which the citizens of India are entitled to under this Constitution. It may be in the interests of this country that, while it might be desirable to recognize a certain foreign country as not a foreign State, it should be limited to such purposes as may be specified in the order so that while making the order the President would have his position made perfectly elastic enabling him to say that while we declare that a certain country is not a foreign State the subjects of that foreign State will be entitled only to certain rights and privileges which are conferred upon the citizens of India and not to all. It is for that purpose and in order to make a

*CAD, Official Report, Vol. X, 15th November 1949, pp. 550-551.

provision for those other matters that we thought it desirable to transpose clause (12) of article 366 and bring it as clause (3) of article 367.

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***Mr. President :** Pandit Bhargava has suggested that there is still time between now and the 25th for the Members to come to an agreement on this question. If it is agreed to by them, that can be done.

The Honourable Dr. B. R. Ambedkar : (Bombay: General) : I think the difficulty could be easily got over if this assembly before it closes its session on the 26th November could pass an Act amending the Government of India Act, 1935, section 290, permitting the Governor-General among other things which he is empowered to do to change also the name of a Province so that the President can act under article 391 and amend the schedule in order to carry out the action that has been taken by the Governor-General under the Government of India Act, as proposed. This matter cannot take more than a few minutes. It would be possible for the Drafting Committee or the Home Department to bring before this Assembly a Bill to amend the Government of India Act 1935, section 290. Such a Bill could be passed before the 26th January.

The Honourable Shri K. Santhanam : Our difficulty is not objection to changing the name but only to 'Aryavarta'. Similarly we cannot allow the Governor-General also to change the name to 'Aryavarta'.

The Honourable Dr. B. R. Ambedkar : It cannot be Aryavarta as the party has given its verdict on that. I am sure Babu Purushotam Das Tandon has taken note of that.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General) **:** What you have rejected will not be put forward by the U.P. Government nor accepted by the Governor-General. That we all accept.

Mr. President : Then nothing has to be done at present.

The Honourable Pandit Govind Ballabh Pant : On the understanding that an amending Bill of the nature suggested by Dr. Ambedkar will be passed before we disperse.

Mr. President : That is for Dr. Ambedkar to do.

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†**Mr. President :** ...Now, we have finished all the amendments, and there is no time for any further general discussion. But as a matter of fact, we have discussed everything which came up and which required discussion. So I would request Dr. Ambedkar to reply to the debate on the various amendments.

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*CAD, Official Report, Vol. X, 16th November 1949, p. 574.

†*Ibid.,* pp. 575-582.

Shri Raj Bahadur : Sir, I want to refer to only one point. May I request that the order about Sirohi be placed before the House so that we may know what its contents are, and whether this Assembly can ratify or endorse it, or in any way take note of it or not.

Mr. President : I do not think that is a matter which comes before this House. It is a matter for the other House, not for this House. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, in my reply I propose to take certain articles which have been subjected to stronger criticism by the Members of the Assembly. It is, of course, impossible for me to touch upon every article to which reference has been made by the members in the course of their observations. I therefore, propose to confine myself to the more important ones against which serious objections were raised.

I begin with article 22. Listening to the debate, I found that this article 22 and its provisions as amended by the Drafting Committee's amendments, have not been completely understood, and I should therefore like to state in some precise manner exactly what the article as amended by the Drafting Committee's amendments proposes to do. The provisions of article 22, as amended by the Drafting Committee, contain the following important points.

First, every case of preventive detention must be authorised by law. It cannot be at the will of the executive.

Secondly, every case of preventive detention for a period of longer than three months must be placed before a judicial board, unless it is one of those cases in which Parliament, acting under clause *(7),* sub-clause *(a)* has, by law, prescribed that it need not be placed before a judicial board for authority to detain beyond three months.

Thirdly, in every case, whether it is a case which is required to be placed before the judicial board or not, Parliament shall prescribe the maximum period of detention so that no person who is detained under any law relating to preventive detention can be detained indefinitely. There shall always be a maximum period of detention which Parliament is required to prescribe by law.

Fourthly, in cases which are required by article 22 to go before the Judicial Board, the procedure to be followed by the Board shall be laid down by Parliament. I would like Members to consider the provisions of this new article 22 as amended by the Drafting Committee, with the original article 15-A. It will be seen that the original article 15-A was open

to two criticisms. One was that (4)(a) did not appear to be subject to maximum period of detention prescribed under clause (7). Clause (4)(a) appeared to stand by itself, independent of clause (7). The second defect was that the requirements as to the communication of the grounds of detention did not apply to person detained under (4)(a). It will now be seen that the present (4) of article 22 removes these two defects as they existed in the original draft of 15-A.

Notwithstanding the improvement made by article 22, I find from the observations of Mrs. Purnima Banerji that she has still some complaint against the article. In the course of a speech yesterday, she said that preventive detention can take place without the authority of law, and secondly, that there are still cases which need not go to the Judicial Board. With regard to her first comment, I should like to say respectfully that she is very much mistaken. Although preventive detention is different from detention under ordinary law, nonetheless, preventive detention must take place under law. It cannot be at the will of the executive. That point is perfectly clear. With regard to the second comment which she has made, that the new article 22 excepts certain cases from the purview of the Judicial Board. I admit that that statement is correct. But I also say that it is necessary to make such a distinction, because there may be cases of detention where the circumstances are so severe and the consequences so dangerous that it would not even be desirable to permit the members of the Judicial Board to know the facts regarding the detention of any particular individual. It might be too dangerous, the disclosure of such facts, to the very existence of the State. No doubt, she will realise that there are two mitigating circumstances even in regard to the last category of persons who are to be detained beyond three months, without the intervention of the Judicial Board. The first is this, that such cases will be defined by Parliament. They are not to be arbitrarily decided by the executive. It is only when Parliament lays down in what cases the matter need not go to the Judicial Board, it is only in those cases that the Government will be entitled to detain a person beyond a period of three months. But what is more important to realise is that in every case, whether it is a case which is required to go before the Judicial Board or whether it is a case which is not required to go before the Judicial Board, there shall be a maximum period of detention prescribed by law.

I think, having regard to these amendments, which have been suggested by the Drafting Committee in article 22, there is a great deal of improvement in the original harshness of the provisions embodied in

article 15A. Sir, having said what I think is necessary to say about article 22, I will next proceed to take article 373, because that article is intimately connected with article 22.

There has been a great deal of criticism against article 373 and some Members have even challenged the legitimacy or propriety of including such an article in the Constitution. But, in reply, I would like to invite the attention of the Members to this question. What would happen if this article did not find a place in the Constitution ? I think it is quite clear that what would happen if this article 373 did not find a place in the Constitution is this, that all persons detained under preventive detention would have to be released forthwith on the 26th of January 1950, if by that date they have undergone the three months' detention permitted by article 22 and if Parliament is not able to pass a law under clause (7) of article 22 permitting a longer period of detention. The question is this : is this a desirable consequence ? Is it desirable to allow all persons who are detained under the present law to be released on the 26th of January, simply because Parliament is not in a position to make a law on the 26th of January, 1950 permitting a further period of detention. It seems to me that that would be a very disastrous consequence. Consequently, it is necessary, in view of the fact that it is quite impossible for Parliament immediately or before the 26th of January to meet and to pass a law which will take effect from that date, to empower some authority under the Constitution to do the work which Parliament is expected to do in order to give full effect to the provisions of article 22. Who is such an authority under the Constitution ? Obviously the President. The President is the only authority who will be in existence on or before the 26th of January and who could expeditiously make a law stepping into the shoes of Parliament and giving affect to the provisions of article 22 permitting a longer period of detention. It is, therefore, absolutely essential to provide for a break-down of the law relating to preventive detention, to have an article such as 373 empowering the President to enact a law which is within the power of Parliament to enact. Sir, I should further like to add that there is nothing very novel in the provisions contained in article 373, because we have given power by other articles to the President to adapt existing laws in order that they may be brought in confirmity with the provisions of the Constitution. Such modification can only be made by Parliament, but we also realise that it would not be possible for Parliament immediately on the 26th of January to adapt so many voluminous laws enacted by the Indian Legislature to bring them in confirmity with the

Constitution. That power has, therefore, been given to the President. Similarly, by another article we have given to the President the power to amend temporarily this very Constitution for the purpose of removing difficulties. I, therefore, submit that there is nothing novel, there is nothing sinister in this article 373. On the other hand, it is a very necessary complementary article to prevent the break-down of any law relating to preventive detention.

Now, Sir, I come to article 34 which relates to martial Law. This article, too, has been subjected to some strong criticism. I am sorry to say that Members who spoke against article 34 did not quite realise what article 20, clause (1) and article 21 of the Constitution propose to do. Sir, I would like to read article 20, clause (A) and also article 21,because without a proper realisation of the provisions contained in these two articles it would not be possible for any Members to realise the desirability of—I would even go further and say the necessity for—article 34.

Article 20, clause (1) says :

> "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence."

Article 21 says :

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Now, it is obvious that when there is a riot, insurrection or rebellion, or the overthrow of the authority of the State in any particular territory, martial law is introduced. The officer in charge of martial law does two things. He declares by his order that certain acts shall be offences against his authority, and, secondly, he prescribes his own procedure for the trial of persons who offend against the acts notified by him as offences. It is quite clear that any act notified by the military commander in charge of the disturbed area is not an offence enacted by law in force, because the Commander of the area is not a law-making person. He has no authority to declare that a certain act is an offence, and secondly the violation of any order made by him would not be an offence within the meaning of the phrase "law in force", because "law in force", can only mean law made by a law-making authority. Moreover, the procedure that the Commander-in-Chief or the military commander prescribes is also not procedure according to law, because he is not entitled to make a law. These are orders which he has made for the purpose of carrying out his functions, namely, of restoring law and order. Obviously, if article 20 clause (1) and article 21 remain as they are without any such qualification as is mentioned in article 34, martial law would be impossible in the

country, and it would be impossible for the State to restore order quickly in an area which has become rebellious.

It is therefore necessary to make a positive statement or positive provisions to permit that notwithstanding anything contained in article 20 or article 21, any act proclaimed by the Commander-in-Chief as an offence against his order shall be an offence. Similarly, the procedure prescribed by him shall be procedure deemed to be established by law. I hope it will be clear that if article 34 was not in our Constitution, the administration of martial law would be quite impossible and the restoration of peace may become one of the impossibilities of the situation. I therefore submit, Sir, that article 34 is a very necessary article in order to mitigate the severity of articles 20(*1*) and 21.

Shri H. V. Kamath : May I ask why the indemnification of persons other than public servants is visualised in this article ?

The Honourable Dr. B. R. Ambedkar : Because my friend probably knows if he is a lawyer....*

Shri H. V. Kamath : I am not.

The Honourable Dr. B. R. Ambedkar : *...that when martial law is there it is not merely the duty of the Commander-in-Chief to punish people, it is the duty of every individual citizen of the State to take the responsibility on his own shoulder and come to the help of the Commander-in-Chief. Consequently if it was found that any person who was an ordinary citizen and did not belong to the Commander-in-Chief's entourage, so to say, does any act, it is absolutely essential that he also ought to be indemnified because whatever act he does, he does it in the maintenance of the peace of the State and there is a no reason why a distinction should be made for a military officer and a civilian who comes to the rescue of the State to establish peace. Now, Sir, I come to article 48 which relates to cow slaughter. I need not say anything about it because the Drafting Committee has put in an agreed amendment which is No. 549 in List IV. I hope that would satisfy those who were rather dissatisfied with the new draft of article 48 as proposed by the Drafting Committee.

Then I come to article 77 which deals with rules of business. In the course of the debate on this article, some members could not understand why this article was at all necessary. Some members said that if at all this article was necessary the authority to make rules of business should be vested in the Prime Minister. Others said that if this article was at all necessary it was necessary for the purpose of the efficient transaction of

*Dots indicate interruption.

business and consequently the word "efficient" ought to be introduced in this clause. Now, Sir, I am sorry to say that not many members who participated in the debate on article 77 have understood the fundamental basis of this article. With regard to the point that the authority to make rules of business should be vested in the Prime Minister. I think it has not been understood properly that in effect that will be so for the simple reason that although the article speaks of the President, the President is also bound to accept the advice of the Prime Minister. Consequently, the rules that will be issued by the President under article 77 will in fact be issued by the Prime Minister and on his advice.

Now, Sir, in order to understand the exact necessity of article 77, the first thing which is necessary to realise is that article 77 is closely related to article 53. In fact, article 77 merely follows on to article 53. Article 53 makes a very necessary provision. According to the general provisions of the Constitution all executive authority of the Union is to be exercised by the President. It might be contended that, under that general provision, that the executive authority of the Union is to be exercised by the President, such authority as the President is authorised and permitted to exercise shall be exercised by him personally. In order to negative any such contention, article 53 was introduced which specifically says that the executive authority of the Union may be exercised by the President either directly or indirectly through others. In other words, article 53 permits delegation by the President to others to carry out the authority which is vested in him by the Constitution. Now, Sir, this specific provision contained in article 53 permitting the President to exercise his authority through others and not by himself must also be given effect to. Otherwise article 53 will be nugatory. The question may arise as to why it is necessary to make a statutory provision as is proposed to be done in article 77 requiring the President to make rules of business. Why not leave it to the President to do so or not to do so as he likes ? The necessity for making a statutory provision in terms of article 77 is therefore necessary to be explained.

There are two things which must be borne in mind in criticising article 77. The first is that if the President wants to delegate his authority to some other officer or some other authority, there must be some evidence that he has made the delegation. It is not possible for persons who may have to raise such a question in a court of law to prove that the President has delegated the authority. Secondly, if the President by his delegation proposes to give authority to any particular individual to act in his name

or in the name of the Government, then also that particular person or that particular officer must be specifically defined. Otherwise a large litigation may arise in a court of law in which the questions as to the delegation by President, the question as to the authority of any particular individual exercising the powers vested in the Union President may become matters of litigation. Those who have been familiar with litigation in our courts will remember that famous case of Shibnath Banerjee *versus* Government of Bengal. Under the Defence of India Act, the Governor had made certain rules authorising certain persons to arrest certain individuals who committed offences against the Defence of India Act. The question was raised as to whether the particular individual who ordered the arrest under that particular law had the authority to act and in order to satisfy itself the Calcutta High Court called upon the Government of Bengal to prove to its satisfaction that the particular individual who was authorised to arrest was the individual meant by the Government of Bengal. The Government of Bengal had to produce its rules of business for the inspection of the Court before the Court was satisfied that the person who exercised the authority was the person meant by the rules of business.

It is in order to avoid this kind of litigation as to delegation of authority for acts, that we thought, it was necessary to introduce a provision like article 77, This article of course does not take away the powers of the Parliament to make a law permitting other persons to have delegated authority as to permit them to act in the name of the Government of India. But while Parliament does make such a provision, it is necessary that the President shall so act as to avoid any kind of litigation that may arise otherwise.

With regard to article 100 which relates to the question of quorum, I do not know whether it is necessary for me to say anything in reply. All that I would say is that, there is a fear having regard to the comparative figures relating to quorum prescribed in other legislative bodies in other countries that the quorum originally fixed was probably too high and we therefore suggested that the quorum should be reduced. The Drafting Committees' proposal is not an absolute proposal, because it is made subject to law made by Parliament. If Parliament after a certain amount of experience as to quorum comes to the conclusion that it is possible to carry on the business of Parliament with a higher quorum, there is nothing to prevent Parliament from altering this provision as contained in article 100. The provision therefore is very elastic and permits the

existing situation to be taken into account and permits also the future experience to become the guide of Parliament in altering the provision.

Something was said with regard to article 128. It was contended that we ought not to pamper our judges too much. All that I would say is that, the question with regard to the salaries of judges is not now subject to scrutiny. The House has already passed a certain scale of salary for existing judges and a certain scale of salary for future judges. The only question that we are called upon to consider is when a person is appointed as a judge of a High Court of a particular State, should it be permissible for the Government to transfer him from that Court to a High Court in any other State? If so, should this transfer be accompanied by some kind of pecuniary allowance which would compensate him for the monetary loss that he might have to sustain by reason of the transfer ? The Drafting Committee felt that since all the High Courts so far as the appointment of judges is concerned form now a central subject, it was desirable to treat all the judges of the High Courts throughout India as forming one single cadre like the I.C.S. and that they should be liable to be transferred from one High Court to another. If such power was not reserved to the Centre, the administration of justice might become a very difficult matter. It might be necessary that one judge may be transferred from one High Court to another in order to strengthen the High Court elsewhere by importing better talent which may not be locally available. Secondly, it might be desirable to import a new Chief Justice to a High Court because it might be desirable to have a man who is unaffected by local politics and local jealousies. We thought therefore that the power to transfer should be placed in the hands of the Central Government.

We also took into account the fact that this power of transfer of judges from one High Court to another may be abused. A Provincial Government might like to transfer a particular judge from its High Court because that judge had become very inconvenient to the Provincial Government by the particular attitude that he had taken with regard to certain judicial matters, or that he had made a nuisance of himself by giving decisions which the Provincial Government did not like. We have taken care that in effecting these transfers, no such considerations ought to prevail. Transfers ought to take place only on the ground of convenience of the general administration. Consequently, we have introduced a provision that such transfers shall take place in consultation with the Chief Justice of India who can be trusted to advise the Government in a manner which is not affected by local or personal prejudices.

The only question, therefore, that remained was whether such transfer should be made so obligatory as not to involve any provision for compensation for loss incurred. We felt that that would be a severe hardship. A judge is generally appointed to the High Court from the local bar. He may have a household there. He may have a house and other things in which he will be personally interested and which form his belongings. If he is transferred from one High Court to another, obviously, he cannot transfer all his household. He will have to maintain a household in the original province in which he worked and he will have to establish a new household in the new Province to which he is transferred. The Drafting Committee felt therefore justified in making provision that where such transfer is made it would be permissible for Parliament to allow a personal allowance to be given to a judge so transferred. I contend that there is nothing wrong in the amendment proposed by the Drafting Committee.

With regard to article 148 I need say nothing at this stage for the simple reason that the amendment moved by my friend Mr. T. T. Krishnamachari (No. 618) is one which has found itself agreeable to all those who had taken interest in this particular article.

Similarly article 320 over which there was so much controversy (if I may say so, without offence, utterly futile controversy) all controversy has now been set at rest by the revised amendment No. 558, which removes the objectionable parts which Members at one stage did not like.

With regard to article 365 there has been already considerable amount of debate and discussion. I also participated in that debate and stated my point of view. I am sure that after taking all that I said into consideration, Members will find that article 365 is a necessary article and does not in any sense over-ride the decision taken by the House at an earlier stage.

I come to article 378. It was contended that this article should contain a provision of a uniform character for determining the population for election purposes. I am sorry to say that I am not in a position to accept this proposal of a uniform rule. It is quite impossible to have a uniform rule in the changing circumstances of the different Provinces. The Centre therefore must retain to itself the liberty to apply different tests to different Provinces for the purpose of determining the population. If any grave departure is made by reason of applying different rules to different Provinces, the matter is still open for the future Parliament to determine, because all matters which have relevance to constituencies will undoubtedly be placed before the Parliament and Parliament will then be in a position to see for itself whether the population as ascertained by the

Central Government is proper, or below or above. Now, Sir, I come to article 391.

Pandit Balkrishna Sharma : Article 379 ?

The Honourable Dr. B. R. Ambedkar : About article 379 I can quite appreciate the objection of my honourable Friend Mr. Sharma. He objects to the words principally, "Dominion of India". I tried yesterday with the help of Mr. Mukerjee, the Chief Draftsman, my hand to redraft the article with the object of eliminating those words 'Dominion of India'. But I confess that I failed. I would therefore request Mr. Sharma to allow the article to stand as it is. It is unfortunate, but there is no remedy to it that I can see within the short time that was left to us.

Now coming to article 391, the position is this : The Constitution contains two sets of provisions for the creation of new provinces. Provinces can be created after the commencement of the Constitution. New Provinces can be created between 26th November and 26th January. With regard to the creation of Provinces after the commencement of the Constitution, the articles that would become operative are articles 3 and 4. They give power to Parliament to make such changes in the existing boundaries of the provinces in order to create new Provinces. Those articles are so clear that I do not think any further commentary from me is necessary.

With regard to the creation of new Provinces between now and the 26th of January, the article that would be operative would be section 290 of the Government of India Act of 1935 and article 391 of the present Constitution. Sir, article 391 says that, if between now and the 26th of January the authority empowered to take action under the Government of India Act, 1935 does take action, then the President, under article 391 is empowered to give effect to that order made under the Government of India Act section 290. 'Notwithstanding the fact' — this is an important 'thing' notwithstanding the fact that on the 25th January, the Government of India Act, 1935, would stand repealed', the action would stand. The President is empowered under article 391 to carry over that action taken under the Government of India Act, 1935 and to give effect to it by an order amending the First Schedule and consequentially the Fourth Schedule which deals with representation in the Council of States.

An Honourable Member : He can only act after 26th January.

The Honourable Dr. B. R. Ambedkar : He can act at any time. The Constituent Assembly will not be able to take notice of it, because it will not be in existence for this purpose after the 26th November. The point

is this that the Government of India Act, 1935 will continue in operation after the 25th November. So long as that Act continues, the Governor-General's right to act under it also continues. He may take action at any time that he likes.

My friend Mr. Sidhva raised one question, namely that any action that may be taken between now and the 25th January should be subject to the scrutiny of Parliament. I think what he intends is that it should not be merely the act of the executive. My friend Mr. Sidhva will remember that our Constitution will come into operation on the 26th of January. Till the 25th of January, the Constitution which will be operative in India will be the Constitution embodied in the Government of India Act, 1935, as adapted on 15th August 1947. Therefore, between now and the 25th of January, the Constitution is not the Constitution that we shall be passing, but the Constitution embodied in the Government of India Act, 1935. Therefore in replying to his question whether the Parliament should have the right or the Indian legislature should have the right to be consulted in this matter, must be determined by the terms contained in section 290 of the Government of India Act, 1935.

If my friend Mr. Sidhva were to turn to section 290 of the Government of India Act, he will see that the Governor-General is not required to ascertain the views of the Provincial Legislature nor is he required to ascertain the views of the Indian Legislature. All that he is required to do is to ascertain the views of the Government of any Province affected by the order. Therefore, so far as the operation of section 290 is concerned— and it is the only section which can be invoked so far as any action with regard to reconstitution of Provinces between now and the 25th January is concerned—this has placed both the Provincial Legislature and the Indian Legislature outside the purview of any consultation that the Governor-General may make for acting under section 290. Therefore with the best wishes in the world it is not possible to carry out the wishes of my friend Mr. Sidhva. He must therefore remain content with such provisions as we have got under section 290. Sir, I do not think any other article calls for a reply. I would therefore close with the hope that the House will be in a position to accept the amendments proposed by the Drafting Committee. *(Cheers).*

Mr. President : I will now put the amendments one by one to vote. Members have noticed that there are many amendments which arise on some amendment or other of the Drafting Committee. It may be that some of the amendments which have been moved by members may be accept-

able to the Drafting Committee and it may be that some Members are willing to withdraw the amendments which they have moved.

[In all 95 amendments of the Drafting Committee alone were accepted. 66 amendments were negatived and 36 withdrawn.]

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***Mr. President :** Before we adjourn for the day we shall make some arrangement regarding the time-table as to what we propose to do. I take it that we do not sit this afternoon. I want to know from Members how many of them would like to speak, so that I might fix an order as also the time. As regards sitting on Saturday next it is not possible for me to decide now. I shall decide it on Friday as to whether we shall sit on Saturday or not. As regards the sessions from day to day, what is the wish of the House ?

Several Honourable Members : Five hours a day.

Prof. N. G. Ranga (Madras : General) **:** One sitting from 2-30 to 6-30 p.m., so that we shall come only once.

Mr. President : What is the time-limit for each speaker?

Shri K. M. Munshi : I suggest 15 minutes and five hours a day so that Members might get a few days between this and the next session.

Several Honourable Members : Half an hour.

Mr. President : As a compromise the time-limit will be 20 minutes for each speaker.

The Honourable Dr. B. R. Ambedkar : All that we can do now is to decide whether we should sit tomorrow. In the meantime it would be desirable if you could invite Members who desire to speak to send in their names to you. After ascertaining the number of speakers who desire to take part in the general debate it will be possible for you to determine whether we should have two sessions a day and also as to the time-limit for every speaker. At the moment nobody is in a position to know how many Members wish to speak. If the number of speakers are not too many it will be possible to increase the time for each Member and it will also be possible to have one session a day. I therefore suggest that you should only fix the meeting for tomorrow and in the meantime ask Members to indicate their wishes to you, so that you may have a list of speakers and then we can come to a decision as to other points, such as the time-limit for each speaker and the number of the daily sessions, whether it should be one or two.

*CAD, Official Report Vol. X, 16th November 1949, p 606.

Mr. President : I think that is a practical suggestion.

Shri T. T. Krishnamachari : May I say, Sir, that we sit tomorrow as usual from ten to one and from three to five ?

Mr. President : For the present I decide that we meet tomorrow as usual at Ten of the Clock and I expect Members to send to the office by this evening their names if they wish to take part in the debate. That information will enable me to decide the hours of sitting, etc. I may say that it would be open to a Member not to participate in the debate even though he has given his name.

The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 17th November, 1949.

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PART III

November 17, 1949 to November 26, 1949

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SECTION EIGHT

Third Reading of the Draft Constitution

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair. (Thursday the 17th November 1949).

***Mr. President :** We shall now take up the third reading of the Constitution. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General)**:** Mr. President, Sir, I move :

"That the Constitution as settled by the Assembly be passed."

(Cheers)

Shri Mahavir Tyagi (United Provinces : General) **:** Congratulations.

Shri H. V. Kamath (C. P. & Berar : General) **:** Let Dr. Ambedkar kindly speak.

The Honourable Dr. B. R. Ambedkar : I propose to speak at the end. It is not the usual thing to speak now.

The Honourable Shri N. V. Gadgil (Bombay : General) **:** This question be now put. *(Laughter).*

Shri Mahavir Tyagi : What is the opinion of Dr. Ambedkar about this Constitution we are passing ?

Mr. President : I think we must now proceed with the business. Dr. Ambedkar has moved that the Constitution as settled by the Assembly be passed. The Motion is now open for discussion. Yesterday we were discussing the time that we would take for this Third Reading and I requested Members to give me names. Till yesterday evening I had received 71 names of members who want to speak, and some additional names have come this morning; but even as it is, it seems to me that if we take about twenty minutes each and if we sit three days this week and five days next week, we shall have twenty-four hours, and twenty minutes for each speaker will give seventy-two speakers, so far as the time is concerned, I think we can very well manage within this time giving opportunities to every speaker who has expressed a desire to speak. So, it is not necessary to sit longer.

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Shri H. V. Kamath : Let us sit for four hours.

Mr. President : At this rate we shall not require to sit four hours.

*CAD, Official Report, Vol. X, 17th November 1949, pp. 607-608.

Shri H. V. Kamath : If we sit four hours, we will be able to finish the session by next Thursday instead of Friday. If we finish earlier, we will have a longer interval before the session of the Legislature.

Dr. P. S. Deshmukh (C. P. & Berar : General) **:** Some hounourable Members may come here later and give their names hereafter.

Mr. President : They may come. We have got some other work also to attend to. Today and tomorrow at any rate or till the end of this week, we sit only for three hours, and if necessary and if we find that sufficient progress is not made, we may have a second session next week.

Shri L. Krishnaswami Bharathi (Madras : General) **:** Is it from ten to one ?

Mr. President : Yes.

Shri L. Krishnaswami Bharathi : We are quite agreeable.

Mr. President : Now, I do not know in what order I should call members. I suppose I must follow the usual practice. If members stand in their places, I shall select one of them.

Shri H. J. Khandekar (C. P. & Berar : General) **:** They should be called alphabetically.

Mr. President : I think that would be too mechanical. I shall follow the usual procedure and I hope there will be no difficulty in that. Shri Muniswamy Pillay.

[Selected excerpts from the speeches of the members eulogising the services of the Drafting Committee, its chairman Dr. Ambedkar and describing the significance of the Constitution are reproduced here.—Ed.]

Shri V. I. Muniswamy Pillay (Madras : General)**:** Mr. President, Sir, I stand before this August Assembly to support the motion moved by my Honourable Friend, Dr. Ambedkar....

...Sir, I proceed now to appreciate the great services that have been rendered by the Drafting Committee whose services are so valuable to us; they have not spared days and nights in coming to decisions on important articles. I must say a word of praise to the calibre and capacity of the Chairman of the Drafting Committee—Dr. B. R. Ambedkar. *(Loud cheers.)* Coming as I do from a community that has produced Dr. Ambedkar, I feel proud that his capacity has now been recognized, not only by the Harijans but by all communities that inhabit India. The Scheduled Castes have produced a great Nandanar, a great devotee, a Tirupazanalwar, a great Vaishnaivite saint, and above all a Tiruvalluvar, the great philospher whose name and fame is not only known throughout the length and breadth of India but of the whole world.

To that galaxy of great men of Harijans now we have to add Dr. Ambedkar, who, as a man has been able to show to the world that the Scheduled Castes are no less important but they can rise to heights and give to the world their great services. I know, Sir, that he has served the community of the Harijans and also of India by his great service and sacrifice in preparing a Constitution which will be the order of the day from the 26th of January 1950 and I also feel. Sir, of the Chief Draftsman and of the staff that have worked in preparing the Constitution cannot be littled; they equally receive our praise....

***Seth Govind Das** (C. P. & Berar: General)**:** @ [Mr. President, I am very happy today on seeing that the third reading of the Constitution, completed by us in about three years, has now begun. On this occasion, I would at first like to congratulate Dr. Ambedkar who has laboured hard to put this Constitution into proper shape. Today he has moved the Motion that the Constitution as settled by the Assembly be passed. It has been said about Dr. Ambedkar that he is the Manu of the present age. Whatever be the truth of that statement, I can say that Dr. Ambedkar was quite equal to the task of constitution making that had been entrusted to him]....

†Shri Rohini Kumar Chaudhuri (Assam : General) **:** On a point of information; in describing Dr. Ambedkar as Manu, was the honourable Member referring to the Hindu Code ?

*CAD, Official Report, Vol. X, 17th November 1949, p. 610.

†*Ibid.,* p. 611.

Seth govind Das : @ [No, Sir, that statement did not have any reference to the Hindu Code, I believe that the House is aware that I am opposed to many of the provisions of the Hindu Code.]...

***Shri Laxminarayan Sahu :** ...Even though I sincerely compliment and congratulate Dr. Ambedkar for the hard labour he has put in this connection, yet I am afraid I cannot compliment him for this unnatural product of his labour which under constant changes has almost become shapeless and ludicrous. I know fully well and I believe that he is likely to say in reply that it is not entirely his handi-work. He had to frame the Constitution in accordance with the wishes of the majority party in the country....

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†Shri R. K. Sidhwa : Now coming to the Constitution, on the 6th of December 1946 before entering this House, this memorable hall which has been renovated particularly for framing of this Constitution which will be remembered in the history of India.... From experience we have seen that today is exactly three years, or rather to be more accurate 15 days less than three years, when we have completed this Constitution. On the 1st of February 1948 after our deliberations from the 9th December 1946 to 1947 a draft Constitution was presented to us. It included 313 articles in the Constitution. Today we have now presented to this House 395 articles, that is to say 82 new articles were inserted. Then there were nearly 220 old articles which were simply scrapped off and in the case of nearly 120 articles the phraseology is materially changed. Accepting the Preamble without a change or a single comma or punctuation, several articles have been changed and I am very glad and the House is also glad that we have by experience thought it desirable that it was not in a hurry that we should prepare a Constitution. We are therefore right in taking this long time and preparing a Constitution for which we shall all be proud. There have been criticisms outside this hall that we have taken a long time and wasted some money. I give no countenance to that. It was also stated that some of us were sending amendments for the purpose of sending amendments and making speeches. We did not countenance or listen to their arguments. We were lighting our battles in this Constitution Hall, to put our views and we have fought our battle very well, and I am glad that the Drafting Committee have taken our battles in the right spirit. We have done our duty. Proceedings in the matter of record are there for future generations to see and the historians will have to judge whether we have wasted the time or we have done our duty to the people of this country and framed a Constitution, for which all of us are proud and I am very proud too.

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*CAD, Official Report, Vol. X, 17th November 1949, p. 613.

†*Ibid.,* p. 623.

@Translation of Hindustani speech.

* History will judge this Constitution. It is certainly not perfect; there may be defects; I know there are defects. I told you that I fought my battles in this hall by moving my amendments and I lost them. But, it is my duty to say to the people that this is the best Constitution and I expect every Member of the Constituent Assembly to say, despite any difference of opinion, that this is a Constitution of which we are proud and we must proclaim to the world and the world will realise that this is a document worthy of reference by various countires in the world. Therefore I feel proud of this Constitution when it becomes law on the 26th day of January 1950, the historic day on which we shall inaugurate the Democratic Sovereign State.

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†**Shri Kuladhar Chaliha** (Assam : General)**:** Mr. President, Sir, at the outset it is necessary to appreciate the work of the Drafting Committee and more so of Dr. Ambedkar in producing a wonderful Constitution in spite of the difficulties with which they were faced. We must also appreciate the members of the Drafting Committee and especially Mr. Munshi who, though he was busy in many matters, always tried to bring about compromise formulae and we appreciate his work greatly and all those silent workers and staff who contributed greatly to the success of this Constitution. Sir, it is necessary to say that, though we may not have produced the best Constitution, at the same time we must say that it is one of the best that we can produce under the conditions prevailing in India. They faced facts and produced one that was necessary. It is said that members of the Drafting Committee were not in the forefront of the battle for liberty but I think that is an advantage because they could look into it dispassionately and produce the one that was necessary. At the beginning of the discussion of the Third Reading we heard from Mr. Muniswamy Pillay that 60 million people of Untouchables were satisfied with this Constitution. That is a great contribution really and if we have satisfied those untouchables whom we have neglected I think we have done a wonderful work. Therefore, my appreciation is due entirely to the Drafting Committee and to those members of the staff who worked hard without having any voice in it and produced the book that is before us....

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‡**Shri Gokulbhai Daulatram Bhatt:** @[When the Draft Constitution was brought before the House for the first time I observed that it was like a bunch of flowers that had been put together after having been brought from different places. I had proceeded to observe that it contained paper

*CAD, Official Report, Vol. X, 17th November 1949, pp. 625-626.

†*Ibid.,* 18th November 1949, p. 642.

‡ *Ibid.,* pp. 648-652.

flowers and in some parts roses and also a rare jasmine flower. Thus it contained flowers of differnet kinds and characters. The bunch that is now before us is one which we had put together ourselves, and I can dare say that some of the flowers that we have put into it have fine and pleasing smell. But we all know that in this world we need all types of things because if it was full of all roses alone and no thorns man would lose his mind because he cannot bear so much good in his life at one time. I therefore believe that to reduce the excess of the smell of the flowers in this bunch other articles have been put into it...

...It is my fervent hope that our people should very quickly move forward for the reconstruction of the country and for the use of the new Constitution. It is only then that our country would be following the proper course in the matter of reconstruction. Before I conclude I would like to reiterate my thanks to the Members of the Drafting Committee and to the other Members who have put in such labour.

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***Pandit Lakshmi Kanta Maitra :** ...Today I gladly join the chorus— of approbation of the services rendered by the Drafting Committee in which we have some of our most intimate and tried friends. I congratulate them on their achievement. I also want to record my appreciation of the work done by the Joint Secretary, Mr. Mukerji and the other members of the staff who have collaborated with us and made it possible for us to have this Constitution.

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†**The Honourable Shri N. V. Gadgil :** ...Sir, the Constitution is an instrument and not an end in itself. In the hands of a good workman, it is a good tool to work with, In the hands of a determined workman it will enable him to get what he wants. In the hands of a reluctant workman there is enough for him to complain. This Constitution is in my humble opinion, in spite of its defects (defects there are and I am not indiscriminate in my admiration although I do not, unlike others, want to repudiate like Vishvamitra), calculated to secure those social and economic aims for which the Preamble stands. With a far-sighted President, with a Prime Minister full of vigour and vision, with genial legislators and a responsible opposition, I think there is nothing to prevent us, under this Constitution, to achieve those aims for which every one of us stands.

‡**Shri M. Ananthasayanam Ayyangar** (Madras : General)**:** ...All communities have taken part in the framing of this Constitution— Hindus,

*CAD, Official Report, Vol. X 18th November 1949, p. 653.

†*Ibid.,* pp. 660-661.

‡*Ibid.,* pp. 663-665.

Muslims, Sikhs, Parsis, Scheduled Castes and representatives from the Scheduled Tribes. All political interests have been represented here. Leaders of all schools of thought are here. Even Dr. Ambedkar, who merely came to watch has taken a leading part in the framing of this Constitution and he is one of the architects of the Constitution we are now passing. The very person who came to doubt and to criticise has ultimately taken charge of this Constitution and framed it. I congratulate him and I congratulate ourselves for the goodwill shown to him and the manner in which he has reciprocated it. After all, by closer contact we can easily understand one another's view point. So long as we are at a great distance, we make much of the small angularities we have. If this Constitution is worked in the spirit in which it has been framed, I am sure we will be one of the foremost nations of the world.

There are also amongst us a number of eminent jurists like Mr. Alladi Krishnaswami Ayyar, whom we cannot easily forget. In spite of his weak and poor health, both inside the Assembly and outside in the Committees, he has been rendering yeoman service. We have amongst us also administrators like our Friend Mr. Gopalaswami Ayyangar. He has had great experience as a civil servant, and then as Dewan in the States and later in the Council of State. Though latterly he has gone out of the picture and has not been much in evidence in the Assembly here in the matter of the Constitution after Dr. Ambedkar has taken it over. I am sure we will not forget the enormous services that he has rendered. Every section of the Assembly has done its best. Some of our friends who have been very energetic in tabling amendments—Mr. Kamath, Mr. Shibban Lal Saksena, Mr. Sidhva and latterly Dr. Punjabrao Deshmukh who has added himself to this list—have all contributed their mite. Though we have not been able to accept many of the amendments tabled by our Friend, Prof. K. T. Shah, for whose learning, intelligence and capacity I have a good deal of admiration, he has confessed to me outside the House when I talked to him that though we were not going to accept his amendments, he tabled them because he wanted to lay his point of view before us. He has accepted the defeats in a spirit of good sportsmanship. Therefore I feel that this Constitution has been framed by every one of us doing his bit gladly. If there has been defeats to some, those defeats have been accepted in the spirit of a minority having to submit to the majority view in the hope of converting the majority view in their favour at some future date.... The peaceful and solemn voice of Mahatma Gandhi from our hearts. With him as our model, let

us march on, work from peace to peace until peace and prosperity reign supreme in the world. May God bless us.

***The Honourable Shri B. G. Kher** (Bombay : General) **:** Mr. President, Sir, I cannot let this occasion pass without expressing my gratification at the completion of a task which, it is very difficult to realise, we began quite three years ago. I remember our first meeting was held on 9th December 1946 and, in these three years were crowded events which would normally have taken possibly three decades for us to accomplish. Our Constitution also has undergone modifications as events outside took place. My first impulse therefore is to congratulate this House on having completed a very difficult, gigantic and monumental task and given a Constitution to free India. Every one will agree that it was a difficult task. Even as the manner in which India attained her independence was unique, so was the Constitution of this very Constituent Assembly. I do not think anywhere else a Constituent Assembly has gone on working as the Constitution making body and as the Parliament of the country for such a long period as nearly three years. After three years labour we have built up a Constitution of which we have every reason to be proud....

†Shri Brabhut Dayal Himat Singka(West Began : General)**:** ...Sir, a lot will depend on how the Constitution is worked and the person who works it. If you put X in charge of a thing he may do it very successfully but if you place another person, in spite of the fact that he has the same resources available to him, he may make a muddle of the whole thing. A lot will depend on how it works, who works it and the manner in which it is worked. People will always be able to find fault but on the whole it has been a very satisfactory Constitution and if properly worked and supported properly by those who can do it, I think the whole thing should proceed in a satisfactory manner....

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‡Shri H. V. Pataskar : ...In spite of the shortcomings we have made a very good provision in the Constitution, namely, the article by which it can be amended when occasion arises. A constitution is a living growth and I hope in course of time this provision will be made use of by those who come after us and according to changed circumstances change the constitution in any manner they like.

@Shri B. A. Mandloi (C. P. & Berar : General) **:** ...In conclusion, I would be failing in my duty, Sir, if I do not say a word about the Drafting

*CAD, Official Report, Vol. XI, 18th November 1949, p. 665.

† *Ibid.,* p. 670.

‡ *Ibid.,* p. 674.

@Ibid., p. 676.

Committee. It is well known that the Committee had an arduous and very important task. The Members of the Committee under the chairmanship of Dr. Ambedkar did their job willingly and splendidly and presented us with a Draft Constitution. I know that during many controversial debates in this House the Chairman of the Drafting Committee put forward his point of view variably and succeeded in bringing the controversy to a satisfactory conclusion. This House appreciates the services of the Drafting Committee and I congratulate Dr. Ambedkar, Chairman of the Committee for successfully piloting the Constitution of free and independent India. The Constitution has been prepared within a record period of three years,—in fact we should eliminate from these three years the period during which we had troubles of unprevented matters and unsettled conditions. This is a great achievement. Sir, it is not enough to have a good Constitution on paper but it is the willingness of the people, the sincerity of the people and the earnest desire of the people to work it that is important. If the Constitution is worked in that spirit I feel sure that our country will have a bright future. We visualise a bright future for our country and we wish her to be one of the foremost countries in the world. If we work the Constitution in the spirit in which we have made it, I feel sure there is a bright future for the country. With these words I support the motion.

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***Pandit Thakur Das Bhargava** (East Punjab : General) : ...I would like, Sir, on this occasion to thank the other friends also who have helped us in drafting this Constitution. I would like particularly to mention Dr. H. C. Mukerjee who had presided over the proceedings of this House with great ability and tact at the time when you were lying sick and I offer my thanks to him. I do not know, Sir, the terms in which I should thank the Drafting Committee, particularly words fail to convey the gratitude that all of us feel for the legal acumen, the untiring industry, the consummate skill and the firmness, tempered with moderation, with which the Chairman of the Drafting Committee has piloted this Constitution through this House and has solved all the knotty questions arising in connection with it. In view of the great public spirit manifested by him I would appeal to Dr. Ambedkar—I regret he is not in the House today—who has so far considered himself the leader of the Scheduled Castes alone, to join the Congress. He has made for himself a high position in our hearts and I do hope that he shall thereby be able to enter the circle of Congress High

*CAD, Official Report, Vol. X, 18th November 1949, pp. 682.

Command—a position which is much more significant and important than the narrow one he is occupying today....

*...Sir, therefore, I am now going to conclude my observations with the remark that Constitutions are only a piece of paper and they by themselves cannot enable us to achieve our ideals. It is the spirit with which the Constitutions are framed and with which they are worked that enables a nation to achieve the objective underlying its Constitution. Therefore, on this occasion, Sir, when we are going to pass our Constitution, I would like to impress upon the minds of the Members who will be appending their signatures to this document on the 26th of January, 1950, that their task is not over by simply preparing the Constitutions but their real task is ahead. It is for them to work the Constitution in such a manner as may enable the people to have real freedom, happiness and prosperity.

Now with your permission, Sir, I would like to refer to only one more matter. It is very dear to me. We have given much to Scheduled Castes. We have provided reservation for them. We have embodied in the Constitution article 335 wherein assurance has been given to them in regard to services; we have provided facility for reservation for them in services under article 16. But I hope we will have not to see the day when the Government reserves posts for them. If we really want to establish here the classless society of Mahatma Gandhi, every one of us who signs the document of the Constitution must do so with the determination rather the pledge, that he must bring the depressed classes at par with him within ten years. He will be false to himself who signs the Constitution but does not work according to its principles....

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†**Mr. President :** We shall now continue the discussion. Mr. Kamath.

Shri H.V. Kamath (C. P. & Berar : General) **:** Mr. President, I rise to extend my limited and qualified support to the motion moved by Dr. Ambedkar. We, Sir, the people of India have come to the end of a long journey which is, however, the beginning of a longer, a more arduous and a more hazardous one.

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‡**Seth Damodar Swarup** (United Provinces : General) **:** @[Mr. President, the Second Reading of the Draft Constitution has ended and the

*CAD, Official Report, Vol. X, 18th November 1949, p. 688.

† *Ibid.,* 19th November 1949, p. 689.

‡ *Ibid.,* p. 693.

@Translation of Hindustani speech.

Third Reading is going on which will also conclude in three or four days. After that the inauguration of this Constitution will be held over till the historic day of the 26th January. All this is good and for that the Honourable Dr. Ambedkar and his other colleagues of the Drafting Committee deserve the congratulations of the whole House, because they have drafted this Constitution with great skill and labour....

***Shri T. Prakasam** (Madras : General): ...The Constitution is a great document and the friends who have been in charge of this framing of this—Dr. Ambedkar—is a great lawyer, is a very able man. He has shown by the work he has done here, how he would be competent to be a king's Counsel of Great Britain, to be perhaps competent to sit on the Woolsack only; but this is not a Constitution that we, the people of this country wanted. Mahatma Gandhi when he took up the organization of this country in the name or the Congress at once saw how this country could be helped and how the millions could be helped. Therefore he decided that the whole country should be divided on linguistic basis so that the people of each area would be competent to develop themeslves....

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†**Prof. Shibban Lal Saksena :** ...My criticism of the Constitution does not mean that I am blind to the achievements which we have made during these three years. I consider, this framing of the Constitution has by itself been the greatest single achievement of ours during the last three years. The barriers to the dawn of freedom which the British Government had erected by the artificial creation of the problem of minorities, the problem of Princes in the Indian States and the Heaven-born Civil Service, have all been wiped of as if by magic in the short space of the last 2 years. The delay in the framing of the Constitution has enabled us to incorporate in this Constitution similar provisions for the administration of the 566 Indian States which have now been transformed and integrated into nine provinces and put on a par with the other units of the Union. This single achievement will be regarded as the greatest task ever accomplished in any country....

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‡**The Honourable Rev. J. J. M. Nichols Roy** (Assam : General) : Mr. President, Sir, I am very glad to come here to give my hearty support to the motion moved by Dr. Ambedkar that the Constitution as settled by

*CAD, Official Report, Vol. X, 19th November 1949, p. 697.

†*Ibid.,* p. 707.

‡*Ibid.,* p. 708.

the Assembly be passed. I consider that this Constitution is the best that could be produced in the present circumstances in India and in the world. Though there are defects no doubt, though we would have liked to have had some provisions in another form, yet, Sir, I believe that this is the best that could be done under the present circumstances. I am glad, Sir, that I have had a part in the framing of this Constitution, though it may be in a very small way. The whole country has had a part in the framing of this Constitution either by way of criticism or by way of suggestions. The Draft Constitution was placed before the country over two years ago, and everyone of us had a chance either to criticise or to send suggestions, and everyone of us here in this Constituent Assembly has had a part in the framing of this Constitution. Therefore we can say that this is a Constitution for the whole country and by the whole country....

...Now, Sir, I want to speak about another thing and that is regarding the Sixth Schedule. I myself am personally indebted to Mr. S. N. Mukerji, the Draftsman, Sir. B. N. Rao and Dr. Ambedkar for giving special attention to the drafting of this Sixth Schedule. I am also indebted to the members of the Drafting Committee who gave us a chance to speak before them....

***Dr. Raghu Vira** (C. P. & Berar : General): ...@[It is only foreign ideals that have been incorporated in this Constitution. It has nothing Indian about it. I however, hope that some years hence this Constitution would not remain in the form in which it has been passed, and that it will come to acquire a genuine Indian character, and would fulfil the basic and fundamental requirements of the people of this country.]

†**The Honourable Shri K. Santhanam** (Madras: General): ... looking back, I feel that these three years have not been too long. In fact, it has enabled us to draft a better constitution than it would have been possible if we were able to finish it a year ago. Many criticisms have been made about this Constitution. My honourable Friend Mr. Naziruddin Ahmad has complained about drafting. But reading it as a whole, if we apply the criteria of clarity and precision, I think we have made a very good constitution indeed.

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‡**Sardar Bhoopender Singh Man** (East Punjab : Sikh): ...However, I feel that it is not the lifeless structure of a Constitution or the written

*CAD, Official Report, Vol. X, 19th November 1949, p. 715.

†*Ibid.,* p. 718.

‡*Ibid.,* 21st November 1949, p. 723.

@Translation of Hindustani speech.

word that ultimately counts. As time passes there are bound to grow certain conventions which are more akin and near to realities, which are more dynamic in character and I feel, Sir, that ultimately it will be the inherent good sense of the people that will count and not the letter but the spirit which shall prevail, and people here in the country will have equal opportunities of justice in every sphere, the sphere of administration and economic structure of the society.

***Kazi Syed Karimuddin** (C.P. & Berar : Muslim) : Mr. President, I congratulate the Drafting Committee for the stupendous work they have done and I have also to congratulate Mr. Naziruddin Ahmad for the arduous work he had undertaken for which he did not receive a word of thanks from the Drafting Committee. I particularly thank Dr. Ambedkar and congratulate him for his brilliant advocacy and the task he had undertaken in drafting this Constitution. I know that he had great handicaps and one of the instances of that handicap is the amendment that I had moved regarding the illegal searches—searches of houses and persons—which he had accepted and which was carried by the House and which was defeated after a week's time after its postponement....

†**Shri Shankarrao Deo** (Bombay : General): While appointing the draftsmen of our constitution, we were eager to have the knowledge of the constitutional pandits, and the precisions of the constitutional lawyers and we have got them in full measure. Dr. Ambedkar and his associates or his colleagues of the Drafting Committee deserve our gratitude, and I think they could stand comparison to any of the constitution makers and draftsmen of any constitution in any country in the world....

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‡**Syed Muhammad Sa'adulla** (Assam : muslim) : Sir, It is said that sometimes silence is golden while speech is silvern. In my humble opinion this should have been one of those occasions when silence would have befitted this August Assembly....

...I cannot stand here today without showing my dual personality, that is being a Member of this August Assembly as well as being a member of the Drafting Committee. To all those friends who have been kind enough to appreciate the hard and dreary labour that members of the Drafting Committee had to undertake throughout the last two years both on behalf of myself as well as on behalf of my colleagues of the Drafting

*CAD, Official Report, Vol. X, 21st November 1949, p. 723-724.

† *Ibid.,* pp. 730.

‡ *Ibid.,* pp. 732-733.

Committee I bow my head in grateful thanks. I am not unmindful of conveying our thanks even to those critics who in their superior wisdom had thought fit to criticise the shortcomings of the members of the Drafting Committee. But I am constrained to say that they have looked into this matter from a perspective that is faulty, from an outlook that is wrong and from a focus that is out of alignment.

Sir, the Drafting Committee was not a free agency. They were handicapped by various methods and circumstances from the very start. We were only asked to dress the baby and the baby was nothing but the Objectives Resolution which this Constitutent Assembly passed. We were told that the Constitution must conform and remain within the four corners of that Objectives Resolution. Moreover, Sir, whatever we did had to be considered and accepted by this House. How dare any member of the Drafting Committee be so arrogant as to thrust the opinion of seven members against a total number of 308 in this House ?

Sir, it is an acknowledged principle of psychology that man is a creature of environments. The Draft Constitution which the members of the Drafting Committee were privileged to place before this House could not evade this universal principle. They had to take the environment and the circumstances prevailing in the country into consideration and many of the provisions which are against the sense of democracy, even of the members of the Drafting Committee, had to be embodied here on account of forces which were superior to that of the Drafting Committee.

Sir, I remember that many sections of our Draft Constitution had to be recast as many as seven times. A draft section is prepared according to the best in each of the members of the Drafting Committee. It is scrutinised by the particular Ministerial department of Government. They criticise it and a fresh draft is made to meet their criticism or requirements. Then it is considered by the biggest bloc, the majority party in the House—I refer to the Congress Parliamentary Party, who alone can give the *imprimatur* of adoption in this House : and sometimes we found that they made their own recommendations which had to be put into the proper legal and constitutional shape by the members of the Drafting Committee.

Sir, no human-made constitution or document is perfect and it is a trite saying that the actual always falls short of the ideal. Even though I am a member of the Drafting Committee. I have very great objection to many of the principles that have been embodied in this Constitution. It does not lie in my mouth to criticise individual provisions of the Draft Constitution,

as I am as much responsible as any other member of the Drafting Committee for the incorporation in our Constitution.

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***Syed Muhammad Sa'adulla** (Assam : Muslim) : ...Sir, after two centuries of subjugation and humiliation, we have drafted our own Constitution. The very idea of it is thrilling to my mind; that very thought sends our hearts bumping and racing, but yet we cannot say with our hands on our hearts that we feel jubilation and joy over the present Draft Constitution to that extent. This Constitution which will be passed and come into law within a couple of months is a compromise Constitution. Many honourable Members have said that this is but a transitory Constitution. I do hope, Sir, that future legislators will try to make it as perfrect as possible. The test of the pudding is in the eating. Similarly nobody can say that this Constitution is to be commended or condemned. The working of the Constitution alone will show whether it is a workable Constitution of whether it is unsuited to the necessities of the times and the requirements of our people or to the genius of our nation, but if we work it in the spirit of the Preamble, we must say that we have a Constitution which can be made an ideal Constitution by working it in the proper spirit....

†...Let us all in all humility try to work this Constitution which has been drafted by people who gave their best to it, and if we work it in the spirit of the Preamble, *i.e.,* try to do justice to all, and try to work it in the spirit of equality and fraternity, we can turn even this dreary Constitution into a garden of paradise.

‡**Shri H. J. Khandekar** (C. P. & Berar : General) : Mr. President, Sir I stand here to support the motion moved by my Friend Honourable Dr. Ambedkar....

...I congratulate the Drafting Committee for the work that it has done to frame this Constitution. Sir, I also congratulate my Friend, Pandit H. V. Kamath, a devotee of G. G. for taking keen interest in the work of this Constitution-making....

...Now today, Sir, we are enacting a law of Independent India under the genius of Dr. Ambedkar, the President of the Drafting Committee. If I may do so, Sir, I call this Constitution the Mahar law, because Dr. Ambedkar is a Mahar and now when we inaugurate this Constitution on

*CAD, Official Report, Vol. X, 21st November 1949, p.p. 735-736.

†*Ibid.,* p. 736.

‡*Ibid.,* p. 736-737.

the 26th of January 1950 we shall have the law of Manu replaced by the law of Mahar and I hope that unlike the law of Manu under which there was never a prosperity in the country the Mahar law will make India virtually a paradise....

***Mr. Mahboob Ali Baig Sahib** (Madras : Muslim) **:** Mr. President, Sir, it is not mere formal or customary expression of appreciation if I express my deep sense of gratitude to you, for the manner in which you conducted the proceedings which left no ground for complaint and if I also congratulate Dr. Ambedkar for the outstanding ability with which he piloted the Draft Constitution. Some of us who did not belong to the dominant party which decided questions outside the House beforehand, either confirming or modifying the views of the Drafting Committee— and as it were, acted as the final arbiter—such of us who did not belong to this party would have been helpless if you had not come to our rescue and allowed us to have our say in the matter, for which fairness on your part. I heartily thank you. Dr. Ambedkar was unique in his clarity of expression and thought, and his mastery over the Constitutional problems including those of finance has been marvelous, unique, singular and complete. But, Sir, unlike you, he was not a free agent. So the evils or the defects in the Constitution as it is placed before us today are inherent in the situation in which he was placed and he cannot therefore be personally responsible for them....

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†Shri S. M. Ghose (West Bengal : General) : ...I have heard in this Assembly something about Manu which I consider is not a proper understanding of what Manu stands for or what Manu really means. Speaking about Dr. Ambedkar an honourable Memeber was pleased to say that he was not a Manu but a Mahar giving us law. But there is no knowing whether Manu belonged to the Brahmin or to the Mahar caste. But Manu represents a conception of Indian people,—an ideal of law given for humanity. In that sense Dr. Ambedkar was rightly called the Manu of the present age. It is not that anybody who is in charge of making law really makes anything, but he simplifies and codifies the law as seen by *rishidrishti, i.e.,* seen by intuition. In that sense, whether a man comes from Mahar community or Brahmin community or any other community, if he has that intuition, if he could see and codify things not only for

*CAD, Official Report, Vol. X, 21st November 1949, p. 742.

† *Ibid.,* p. 744.

his community, not as his community views things, but for the whole of humanity, he will be rightly called Manu....

***Shri P. J. Chacko :** (United State of Travancore and Cochin): I know that the success of a constitutional experiment depends more on the character of the people and on the conditions of the times than on the provisions contained in the Constitution itself. Hence, granting these defects, I know it is our duty now to make an honest endeavour to successfully work it. Let us believe that the darkness will be over soon and that in the morning to come we will be able to amend the Constitution and to treat all States alike, and to give some powers to the Constituent States also. Knowing its drawbacks let us try to successfully work it.

†**Sardar Hukam Singh** (East Punjab : Sikh) : Mr. President, Sir, I must start with paying my earnest and sincere tribute to our worthy President whose patience, forbearance and sense of justice have guided us throughout these proceedings and have contributed mostly to our successfully, going through all these stages.

I join my other friends in congratulating the Drafting Committee and particularly its leader for cheerfully carrying through this heavy strain during these months. It was a gigantic task and they must be feeling relieved after it...

‡**Shri S. Nagappa** (Madras : General): Mr. President, Sir, very many speakers that spoke before me have congratulated the Drafting Committee and its Chairman. I join them, Sir, I do so.

From the point of view of the Scheduled Classes, their point was achieved on the day on which Dr. Ambedkar was elected as Chairman of the Drafting Committee. He had been one of the stoutest champions of the cause of the Scheduled Classes. He was elected as the Chairman. Ever since he was elected, the other members of the Scheduled Classes were very reluctant to co-operate; not because they did not want to co-operate, but because they knew Dr. Ambedkar who was a champion of their cause was there to watch and provide such articles that will be safeguarding the interests of the Scheduled Classes. Well, Sir, this has proved to what heights Dr. Ambedkar, though he is a member of the Scheduled Classes, if an opportunity was given, can rise. He has proved this by his efficiency and the able way in which he has drafted and piloted this Constitution. Now I think this stigma of inefficiency attached to the

*CAD, Official Report, Vol. X, 21st November 1949, p. 748.

† *Ibid.,* p. 749.

‡ *Ibid.,* p. 754.

Scheduled Classes will be washed away and will not be attached hereafter. Only if opportunities are given, they will prove better than anybody else. Now for having played such a great part, on behalf of the Scheduled Classes I congratulate Dr. Ambedkar. It is not the strength of the Scheduled Classes that made him the President of the Drafting Committee but it is the generosity of the majority party and I am very much thankful to them for the same.

Now I call this, a Constitution for the benefit and betterment of the common man. It can be called a Common man's Constitution. This assures the right of common people more than that of the landed aristocracy or of industrialists and capitalists. This will go a long way for the betterment of the common people of this country. It is so because though Dr. Ambedkar happens to be a man of high status in society, yet he has been drawn from the lot of the common people. He has not forgotten the interest of the common people and he has been good enough to do all that is possible for their betterment. Articles 14 to 17 go a long way for the betterment of Scheduled Classes. Article 14 assures equality before law particularly to everyone. This is the most important one....

Mr. President : ...

***Shri Jaspat Roy Kapoor** (United Province : General) **:** ..... Dr. Ambedkar and his colleagues have rightly deserved the praise which has been showered on them by almost every speaker. I had started with a prejudice against Dr. Ambedkar, for I had felt very sore many years ago when Mahatma Gandhi was undergoing fast against grant of separate electorates to the Scheduled Castes and I had read in the papers the news that when he had been invited to see Mahatma Gandhi to discuss that question, he once said that for a day or two he was not free because he had to attend to some professional engagements. I felt very sorry then. I do not know how far it is correct. But even if it was so, the great work that he has done during these three years has washed away that particular sin or any other sins which he may have committed. I have developed an admiration and also affection for Dr. Ambedkar for the very useful work and the very patriotic work which he has done. His very first speech in this assembly had dispelled all my doubts and fears in relation to him and today I can say that I consider him to be one of the best patriots of this country. I have always found him to bring to bear upon the subject a very constructive approach. On many

*CAD, Official Report, Vol. X, 21st November 1949, p. 758.

an occasion when there seemed to be a deadlock, he came forward with suggestions which resolved those deadlocks. I always found him rise to the occasion except, unfortunately, on one occasion and that was when he did not agree to give up reservation of seats for the Scheduled Castes. Every other minority gave up the right of reservation of seats, but unfortunately Dr. Ambedkar would not agree to it. I wish he could have also agreed to it and I could have then been in a position today to say that he rose equal to every occasion, but unfortunately I cannot say it today. Be that as it may, the great work he has done except this must be recognised in very grateful terms....

***Begum Aizaz Rasul** (United Provinces : Muslim) **:** Mr. President, Sir, this is indeed a very solemn and auspicious occasion that this Constituent Assembly has finished its mighty task of drafting a Constitution for free India—a Constitution which embodies in itself the hopes and aspirations of the Indian people. If a constitution can be judged by its phraseology, or by the provisions it contains, then, certainly, our Constitution deserves a very high place in the constitutions of the world and I think we are justified in feeling proud of it. I would like to congratulate Dr. Ambedkar and members of the Drafting Committee on their wonderful work and to thank you, Mr. President, for the patient and efficient manner in which you have conducted the proceedings of this House. The Secretariat staff of the Constituent Assembly also deserve our thanks for their hard work and incessant labours.

Sir, the most outstanding feature of the Constitution is the fact that India is to be a purely secular State. The sanctity of the Constitution lies essentially in its affirmation of secularity and we are proud of it. I have full faith that this secularity will always be kept guarded and unsullied, as upon it depends that complete unity of the peoples of India without which all hopes of progress would be in vain.

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†**Pandit Hirday Nath Kunzru :** ... In this connection, Sir, we must all in fairness pay a tribute to the Drafting Committee for the efficiency and thoroughness with which it dealt with its task. Its members have had to work hard individually and collectively, and while it is impossible for anyone to say that all their recommendations are of such a character as to win the approval of all sections of the House, it must be admitted that they approached their duties, in so far as they were

*CAD, Official Report, Vol. X, 22nd November 1949, p. 114.

† *Ibid.,* p. 782.

free to give effect to their wishes, with a desire to enlarge the bounds of freedom....

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***Shri Syamanandan Sahaya** (Bihar : General): As I said before, the present is a unique occasion, and it is unique in many respects. It is unique in the annals of history, which depicts the past. If we look back to our history, it will be conceded that although we have had at one time milk and honey, flowing in this country under able rulers, and although we had what we are still striving for, *viz.,* Ram Rajya; but it was all the rule of a benevolent ruler, and not a law given unto ourselves by the representatives of the people. I therefore say, Sir, that this is a unique occasion even if you compare the present with our hoary past. Even the future, I submit, will have nothing to equal it. We may have reforms in this Constitution, and we may have better things in the future, but the originality that this Constitution will claim, would not possibly be available to any other....

... Last, though not the least, this Constitution is unique in another respect. Mahatmaji's methods once again proved how with goodwill, towards opponents, one could win over and conquer the worst of critics and we now see a practical example of a high ideal translated into action, namely that the achievement of independence would go to the credit of Mahatmaji, and its codification to one of Mahatamaji's worst critics, *viz.,* the great architect of our great Constitution Dr. Ambedkar. Dr. Ambedkar, Sir, deserves the gratitude not only of this Assembly but of this Nation. He and his colleagues on the Committee have laboured to find out the best things almost all over the world and to suit them to the needs of this country. The masterly way in which they prepared the draft and the masterly way in which Dr. Ambedkar piloted it will ever be remembered not only by us but by the posterity with gratitude. Many a defect has been pointed out in this Constitution. I do not think the framers of this Constitution claim any perfection for it, but it cannot be denied that there has been a sincere and a genuine effort to bring about as large a measure of perfection as it was possible under present conditions....

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†**Smt. Hansa Mehta** (Bombay: General) **:**... The goodness or badness of a Constitution depends on how it is going to work. If it works in the

*CAD, Official Report, Vol. X, 22nd November 1949, p. 787.

† *Ibid.,* p. 788.

‡ *Ibid.,* pp. 795-796.

interests of the people, it will be a good Constitution; if it works otherwise, it will be a bad Constitution. It is for the future electors to elect the right kind of persons, who will work the Constitution in the interests of the people. The responsibility, therefore, lies with the people. One thing, however, I would like to observe and that is in the circumstances in which we were placed, we could not have produced anything better. With such divergent views in the Assembly, it is indeed a miracle that we have achieved this measure of agreement. At one extreme we had Seth Govind Das, the champion of the cow and at the other extreme we had Professor K. T. Shah, the champion of the underdog, and in-between we had many variations; the last speaker (Shri Rohini Kumar Chawdhari) would supply a good example....

***Shri Lokanath Misra :** ...It is my view and so it may be that this, our Constitution Act will go as a great civilised document of the modern world. But I would not like to indulge in any kind of self-praise, praise either for the Drafting Committee or for the honourable Members or for our honourable President or for anybody else. The reason is, we have only done our duty, as best as we could and it is for the people to judge our labours....

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†Shri Jadubans Sahay (Bihar : General) : Sir, much has been said regarding the different aspects of this Constitution....

...The fact is that we are a nation born new and we have to learn the arts of democracy. The lessons of democracy are not taught in any book, but they have got to be developed. It all depends upon the character of a nation, the integrity, the honesty, our love for democratic principles and our zeal to pursue and follow them which can make or mar a constitution. The constitution of a country does not depend upon the cold letters, however beautifully or brilliantly printed in a book. It depends to its growth and development upon the character of a nation. It is the soil— the character of a nation—upon which the seeds of Constitution have got to germinate. If the soil is rocky or barren, then certainly howsoever good the Constitution might be and in howsoever grand language it may be worded, it is sure that the Constitution cannot lead us to our goal. But I have faith, Sir, in the innate genius of our country. I have faith also in the coming generation of tomorrow and we have nothing to despair over what we have done. I think that no amount of guarantees in the Consti-

*CAD, Official Report, Vol. X, 22nd November 1949, p. 797.

† *Ibid.*, p. 800.

tution or the filling up of the omissions mentioned will carry us to the goal. It depends upon those who work the Constitution. It depends on how we develop the spirit of tolerance and not on the Constitution or the letter of the law. It depends on the spirit of love towards those that are down trodden and those who call themselves minorities. We may enact in the Constitution that untouchability is abolished in every heart and home but that carries us nowhere. You should have love and sympathy for what we call the 'have-nots'. It does not depend on the Constitution or its articles. It depends upon our own character, our own vitality as a nation....

***Shri Gopal Narain** (United Provinces : General) **:** Mr. President, Sir, during the last three years when the Constitution was on the anvil I remained a calm and silent observer except twice when I broke the monotony. But at this final and Third Reading stage I wish to record my views plainly, openly and courageously.

At the outset I congratulate Dr. Ambedkar, the Chairman of the Drafting Committee and the members thereof for producing such a voluminous Constitution in which nothing has been left out. Even price control has been included in it. I venture to think that if they had the time they would have even prescribed a code of life in this Constitution. A word more for Dr. Ambedkar, Sir. There is no doubt, he is lucidity and clarity personified. He has made a name for himself....

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†**Shri Ajit Prasad Jain** (United Provinces : General)**:** Mr. President, Sir, it is but once in life that a nation decides to give a Constitution unto itself, and we who have participated in framing this Constitution have a good reason to be proud of our lot. In the history of India, there have been periods of greatness and glory, there have been periods of great empires and expansion and of benevolent and good kings, but never did we have a Constitution framed by the people for the people. Before proceeding further it is necessary that we offer our thanks to Dr. Ambedkar and the Drafting Committee who have sat day after day incessantly and worked hard....

‡**Shri S. V. Krishnamoorthy Rao** (Mysore state)**:** Mr. President, Sir, I deem it a great privilege to have had an opportunity of being associated in the framing of this Constitution under your able guidance and I stand before you to add my humble need of praise to the Chairman and

*CAD, Official Report, Vol. X, 22nd November 1949, pp. 803-804.

† *Ibid.*, p. 805.

‡ *Ibid.,* p. 809.

members of the Drafting Committee for making an excellent job of the work that was entrusted to them. Sir, I submit that under the heavy stress and strain of time and circumstances under which they had to undertake this task, no other committee or no other body would have given us a better Constitution....

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***Shri Thirumala Rao :** ...Situated as we are, we are in possession of a Constitution which can be turned to best account by the persons that work it, by the legislators and by the Ministers that these legislators would choose. I say that it depends mostly on the Prime Ministers for the next few years of this country to see that the greatest benefit is derived from this Constitution. We have rightly selected, Sir, the Chakra as our emblem, as the historic reminiscence of the period of Asoka. Describing the meaning of this Chakra, Rhys David, the famous orientalist has said that this Chakra is intended to send rolling the Royal Chariot wheel of universal empire of truth and righteousness. If any country which departs from the essential moral principles on which it professes to stand it has no future. But this country in keeping with the ancient traditions and ideals has rightly chosen that Chakra which is called the Dharma Chakra of Asoka and Mahatma Gandhi has blessed this Chakra. With his spirit hovering over this nation and with this emblem of our flag, it is the duty of this House and the leaders of the future to uphold the Congress principles and fulfil the destiny of this Nation.

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†Shri Ari Bahadur Gurung (West Bengal : General) **:** Mr. President, Sir, I associate myself with my colleagues in congratulating the Chairman of the Drafting Committee for having brought this stupendous task to a successful conclusion....

‡Giani Gurumukh Singh Musafir (East Punjab : Sikh) **:** ...One word more and I have finished. In preparing the draft, Dr. Ambedkar and members of the Drafting Committee have worked very hard. They deserve our congratulations for preparing this draft within such a short time and under adverse circumstances....

@Shri R. V. Dhulekar (United Provinces : General) **:** Mr. President, Sir, I am here to support the Resolution that has been placed before this

*CAD, Official Report, Vol. X, 22nd November 1949, p. 820.

† *Ibid.*, 23rd November 1949, p. 821.

‡ *Ibid.,* p. 825.

@ *Ibid.,* p. 826.

House by Dr. Ambedkar. The Constitution has been discussed at very great length in these three years and therefore it is now too late to point out all the defects and the great points that are in the Constitution. I am satisfied that the Constitution on the whole is a very good one. Everybody knows that milk contains more than 15 per cent, of water and if the balance is good, it maintains our body and strengthens it. It gives a longer life....

... In the end, I have to place my heartfelt thanks on record to you, Sir, the President and Dr. Ambedkar. The work that was before us was a very great task. Dr. Ambedkar has performed a very great work. I would not say Herculean because that is a very small word. He has performed a task worthy of the great Pandava Bhim and worthy of the name that he has— Bhim Rao Ambedkar.—He has certainly justified his name—Bhim Rao— and he has performed the task with clarity of vision, clarity of thought and clarity of language. Throughout, he was very clear. He always tried to understand the opponent's view and he always tried to accommodate him, and he always tried to put his own views in the most clear language. We are very grateful to him....

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***Shri B. P. Jhunjhunwala** (Bihar : General) **:** Mr. President, Sir, there have been various criticisms of this Constitution and one of the criticisms levelled against the Drafting Committee is that they have done nothing more than adopt the Government of India Act of 1935. If this criticism can be levelled against the Drafting Committee, I should say it is most uncharitable. On the other hand, I would say that before adopting any article, the Drafting Committee has taken great pains to go through all the Constitutions of the world and looked into all the amendments with great care both from the point of view of theory as well as from the point of view of their practical application. If they have not accepted any theories it is not because these were not in the Government of India Act 1935, though those theories were applicable and right, but because they could not be practically applied here under the present condition....

‡**Shri Alladi Krishnaswami Ayyar :** (Madras : General) : Sir, in supporting the motion of the Honourable Dr. Ambedkar for the adoption of the Constitution, I crave the indulgence of the House for a short while. This Constitution has been settled by the Constituent Assembly in the

*CAD, Official Report, Vol. X, 23rd November 1949, pp. 828-829.

† *Ibid.,* pp. 831-832.

‡ *Ibid.,* p. 834.

light of the recommendations of the various committees appointed by this House and the draft as originally submitted by the Drafting Committee and as revised later. The Constitution as it has finally emerged, I submit, truly reflects the spirit of the Objectives Resolution with which this Assembly started its work and the Preamble of the Constitution which is mainly founded on the Objectives Resolution....

*...Before I conclude, I would be failing in my duty if I do not express my high appreciation of the skill and ability with which my friend the Hounourable Dr. Ambedkar has piloted this Constitution and his untiring work as the chairman of the Drafting Committee. Latterly I know he was ably assisted by my friend Mr. T. T. Krishnamachari. I would also be failing in my duty if I do not give my tributes to the services of Sir B. N. Rau and to the untiring energy, patience, ability and industry of the Joint Secretary, Mr. Mukherjee and his lieutenants.

In the end, you will pardon me, Sir, if I make some reference to your work in this Assembly as it may savour of flattery. You have given your whole life to the service of this country and this is the crowning act. There is none who is held in greater esteem and in love than yourself and you have showed yourself to be the worthy President of this Assembly. I am particularly grateful to you because on account of my state of health you have been pleased to permit me to address from my seat and I am also thankful to the Members of this House for the indulgence they have extended to me in that respect. It is some consolation to me that I might have been of some little use in the work of the various committees and in the work of this Assembly. *(Cheers).*

†**Mr. Hyder Husein :** ...This is not the stage, nor the time for criticising the various provisions of this Constitution. There has been a good deal of it, both inside and outside this hall. My answer is that this is the best that the available talent in the country could produce, and if we expect anything more, we have to produce men of greater intellect and scholarship in the land, if that is possible in the near future. I am however, bound to say that the product is one of which any nation can be proud. Let us then, pledge ourselves to give it our unstinted support, without any mental reservations whatsoever. We have attained political freedom, and the need of the day is the economic uplift of the country, as for this alone freedom was worth lighting for. This requires greater labour, greater work and greater sacrifice than even the light for freedom. It is not so difficult

*CAD, Official Report, Vol. X, 23rd November 1949, pp. 840-841.

† *Ibid.,* p. 842.

to destory a thing as it to construct it. With the termination of foreign domination in the land, we have full opportunity for constructive work. Let us then strive to build our India which will be worthy of its past and a pride for the future....

***Shri B. M. Gupte :** ...After all, a Constitution cannot be judged merely from its text or on paper.... So it is not the Constitution that matters nor the people who make it, but it is the men who work the Constitution and the spirit in which they work it. Any Constitution may be good on paper, but its success depends upon the manner in which it is worked....

...In spite of the initial trouble and occasional lapses I hope generally and ultimately the commonsense of the common man will triumph. It was for us only to fashion the instrument. It is for others to work it. As far as I can see, we can certainly make the claim that we have fashioned it to the best of our abilities and according to the best of our lights. It is an instrument fairly workable and fairly flexible. It ensures security and stability. If we study the provisions of this Constitution, we find that the one dominating concern of the Drafting Committee was the security of the new State. Therefore, this Constitution ensures security and stability without impeding progress. It promotes collective good without stifling the development of individual personality. But in my opinion, the real test of the Constitution would be whether it is able to bring about any speedy improvement in the miserable lot under which the common man has been suffering for generations past. If this Constitution brings him some solace, I shall certainly feel very proud of my association in the framing of it.

†Shri Balwant Sinha Mehta : ...The fact is that the Constitution drawn up by us is not only quite detailed but also quite good. I am quite sure that the foreigners would be wonderstruck when they would see how good a Constitution we have been able to give to ourselves. All the Members of this august Body and the members of the Drafting Committee and more particularly Dr. Ambedkar, T. T. Krishnamachari, Shri Alladi Krishnaswami and others have laboured hard for giving a proper shape to the constitution. I believe, these gentlemen deserve all the praise we can bestow upon them. We must also offer our homage to Pandit Jawaharlal Nehru, Sardar Patel and the other Congress leaders and martyrs....

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*CAD, Official Report, Vol. X, 23rd November 1949, p. 445.

† *Ibid.,* p. 461.

***Sardar Sochet Singh :** ...Our Constitution carries in it the impress of the high-souled nobility of the President—Dr. Rajendra Prasad, the universal vision of Pandit Jawaharlal Nehru, the unfailing judgment and strength of Sardar Vallabhbhai Patel, the scintillating and penetrating intellectuality of Dr. Pattabhi Sitaramayya, the erudition and labours of Dr. Ambedkar and above all, the Patriarchal blessings and divine inspiration of the Father of the Nation—our revered Mahatma Gandhi. It is my hope and prayer that such a monumental Charter of Freedom of millions of my countrymen will not fail to bring about peace, prosperity and happiness not only for this country, but for the whole world. *(Cheers.)*

†**Mr. T. J. M. Wilson** (Madras : General) **:** Mr. President, Sir, I also join in thanking you, the Rashtrapathi and the Chairman and members of the Drafting Committee for this Constitution....

‡...I now come to the criticism that is levelled against the Constitution that it has not provided for or conferred anything on the common man, that it has not provided for social and economic justice. That, I submit, Sir, is an erroneous contention, because it is based on an erroneous conception of the scope of the Constitution. A Constitution has a limited scope. Its main function is to provide for a machinery of Government, and this Constitution has provided for a machinery of the government, whatever its character. And whatever the privileges or rights put in certain chapters are only those rights and privileges which we have achieved so far. The Constitution embodies and gives sanction only to those rights that are achieved. That is the basic conception which I want to emphasise, because otherwise, if we had embodied certain rights in the Constitution which we have not achieved so far, that would, have given a distorted, dishonest and hypocritical picture of the country as a whole, and what is more, the Constitution would have been simply unworkable. Therefore, the Constitution has a limited purpose, and in spite of certain ugly features of the Constitution, for example the provision for the protection of property as a fundamental right, it would not and shall not prevent the country, as Mr. Santhanam has pointed out, from achieving socialism....

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@**Shri Dharanidhar Basu Matari** (Assam : General) **:** Mr. President, Sir, I feel I cannot leave the Constituent Assembly to return to my

*CAD, Official Report, Vol. X, 23rd November 1949, pp. 855-856.

† *Ibid.,* p. 856.

‡ *Ibid.,* p. 838.

@ *Ibid.,* p. 867.

province, Assam, without adding my own tribute to Dr. Ambedkar and the Drafting Committee for their great achievement in producing this Constitution. I think I am right in saying that everyone has some or the other criticism or grievance to air. The Constitution does not, and cannot satisfy every section from all points of view, but, taking everything from an all-India point of view, the Constitution is not disappointing and, in fact, the best that could have been framed under the difficult circumstances after Partition. It is not what has been put down in cold print in the Constitution, in the Articles, in the Schedules, that will matter. It will surely be the spirit in which the purpose of the Constitution is executed. If all sections co-operate honestly and unselfishly, I am certain India will progress along right lines....

***Shri Ari Bahadur Gurung :** Mr. President, Sir, I associate myself with my colleagues in congratulating the Chairman and other members of the Drafting committee for having brought this stupendous task to a successful conclusion. I have only a few observations to make. Firstly, the criticism of the Constitution that it does not provide for the establishment of socialism is as irrelevant as the complaint that it is likely to open the way to dictatorship is futile. The real test of democracy is to give the right to people to decide for themselves the nature of the Government they would like to have. The question of dictatorship or totalitarian communism will depend entirely upon the manner in which the people will work the Constitution. The Constitution will be subject to a continuous series of modifications according to the will of the people. Such provisions have been provided already in the Constitution. Sir, I personally feel that a Constitution is something of a sacred character which inspires future generations. It is the embodiment of the living faith and philosophy. Therefore we must not forget this gospel....

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†Shri Manikya Lal Varma (United State of Rajasthan) **:** [Mr. President, first of all I take this opportunity to offer my thanks to the Honourable Dr. Ambedkar and the Members of this House....

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†Shrimati Purnima Banerji (United Provinces : General) **:** Sir, at the cost of a little repetition, I would at the outset like to associate myself with my colleagues in their expression of thanks to the

*CAD, Official Report, Vol. X, 23rd November 1949, p. 868.

† *Ibid.,* 24th November 1949, p. 873.

‡ *Ibid.,* p. 878.

Members of the Drafting Committee, to you and to all others who played such an important and necessary role in the various stages of this Constitution. Without being open to the charge of making any invidious distinction, I would like to add a special word of thanks to you on behalf of the back-benchers of this House. For, at various stages of the Constitution, when we were rightly or wrongly exercised by certain doubts in regard to certain clauses of the Constitution, you used your good influence on our behalf with the Drafting Committee to clear these doubts.

Sir, the Constitution of a country always is a very important and precious document, because it gives us an idea of how the great people of a country fashion their institutions, how they want to live, what are the political arrangements under which they exercise their judgment and what are the hopes and aspirations which they entertain for the future.

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***Shri K. M. Jedhe** (Bombay : General) **:** Mr. President, Sir, I stand here to congratulate Dr. Ambedkar and his colleagues for having taken great pains in framing India's new Constitution. We have spent nearly three years and now we are completing our great work. Some Members while congratulating Dr. Ambedkar have called him the present Manu. I am certain that he would not like this appellation. I know he hates Manu, who has created four castes, the lowest of which is the untouchable class. I remember that he has publicly burnt Manu Smriti in the huge meeting of the untouchables at Mahad in 1929. He is the great leader of the Harijans and is greatly extolled by them as their champion and is worshipped as an idol. They are very proud of him. They call him Bhim and make it known to the public that he has framed Bhim Smriti. I also call it Bhim Smriti though I belong to the Sprasya Class. Dr. Ambedkar is a great lawyer and a man of great ability and intellect; nobody will doubt that. Untouchability has been removed by law and while framing the Constitution, Dr. Ambedkar was very keen and earnest in safeguarding the interests of the Harijans. All Harijans must be grateful to him. At the same time, we must also be grateful to our country's Father, Mahatma Gandhi, who gave us independence. He was a great soul who made great efforts during his life-time to remove untouchability. His great wish was to bring the Harijans to the level of touchables. He is not among us to see his great

*CAD, Official Report, Vol. X, 24th November 1949, p. 890.

wish fulfilled and bless us, because he fell a victim to a cruel and villainous plot....

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***Shri Jaipal Singh** (Bihar : General) **:** Mr. President, Sir, may I venture to ignore your counsel against repetition and add my own tribute, unqualified tribute, for the tremendous work Dr. Ambedkar and his hard-worked team have put in the making of the new Constitution and also, Sir, may I humbly add, for the inexhaustible patience you yourself have shown in guiding our deliberations....

†Shri A. Thanu Pillai : ...In conclusion, Sir, from what I have been able to see of the procedure of this Assembly, I must tell you I am amazed at the patience you have been showing. Even if it be a question of our communication with the Moon, if the rules permitted it, you were prepared to put it to the vote. (2) This was the extent of patience that we witnessed here on your part. I must also be permitted to add one word of thankfulness to all those concerned, for the ability of Dr. Ambedkar and Mr. Alladi Krishnaswami Ayyar, for the extreme interest that Mr. T. T. Krishnamachari and Mr. Santhanam and others took in the framing of the Constitution—when I mention a few of these names, it does not mean that there are no other names to be mentioned. Everybody concerned has functioned well....

‡Shri O. V. Alagesan (Madras : General) : Mr. President, Sir, the Drafting Committee and all those that have been connected with its labours have been rightly congratulated and we are sure to miss the stentorian voice of Dr. Ambedkar explaining in a crystal clear manner the provisions of the Constitution and also the shrill voice of my Friend Mr. T. T. Krishnamachari whose contribution to the making of this Constitution everybody acknowledges....

@...Sir, another charge is that this Constitution is full of checks and safeguards, and it curtails freedom of the individual and restricts State autonomy. I do not take it in that light. These safeguards are there only as fences intended to protect the infant freedom and democracy from stray cattle. A tiger cannot say, for instance, that it should be free to kill the lambs and take them away. This is my reply when the cry that civil liberty is in danger is raised and all these provisions are thrown in our face....

*CAD, Official Report, Vol. X, 24th November 1949, p. 893.

† *Ibid.,* p. 898.

‡ *Ibid.,* pp. 898-899.

@ *Ibid.,* p. 901.

Sir, under this Constitution, the foundations of a secular democracy have been well and truly laid, and if we are true to ourselves and to our traditions, and to our leader Mahatma Gandhi, we can safely hope that we will march from progress to progress and convert this Constitution into a blessing for this ancient land.

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***Shri L. Krishnaswami Bharathi :** Sir, no period in the history of India has contributed more memorable events than the short space of the past three years. Looking back upon the past three years since we commenced the stupendous task of framing this Constitution, one is bound to be struck by the kaleidoscopic changes that have happened in the history of our country.

Five memorable events of great magnitude and significance marked out this eventful period. To state them *seriatim,* they are : 1. the partition of our country, 2. the achievement of independence, 3. the passing away of Mahatma Gandhi, the Father of the Nation, 4. the integration of what are known as Indian States, and last but not least 5. the setting of the Constitution of free India....

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†Shri Sarangdhar Das : ...I disagree with most of my friends, particularly the Hindu friends who expatiate on the existence of the republican system of government, *i.e.,* republices in our old Hindu polity. I disagree with them. My contention is that our lower classes, the lower castes of our society, whom we call Harijans, have all along been kept in a depressed condition. Consequently, there was no democracy, If there was democracy, if there was a republic, it was amongst the higher classes, what we call the higher castes, If you look at the Constitution from that point of view. I think the removal of untouchability and the introduction of adult franchise are two of the very best elements that have been introduced in this Constitution. I may remind you, Sir, that in the American Constitution, the franchise was given only to free white citizens, because in those days, there were also white people who were slaves, working as slaves in the West Indies and the Caribbean Islands. They were debarred from the franchise. The black people, the Negroes, were nowhere. They were denied the vote. They came only in the time of Abraham Lincoln, when they were enfranchised. So, I say, in our Constitution, the conceding of adult franchise, of equality of women and of the removal of untouchability, these three things are the best in the Constitution....

*CAD, Official Report, Vol. X, 24th November 1949, p. 903.

† *Ibid.,* p. 913.

***Smt. Ammu Swaminathan :** ...We have also to pay our tribute to Dr. Ambedkar and the members of the Drafting Committee and the Secretariat of the Constituent Assembly for the very hard work that they had put in for so many weeks and months. I know their task has not been an easy one but they have overcome all difficulties and thus we are today on the eve of passing this great Constitution of our country. ...

†**Shri L. S. Bhatkar** (C. P. & Berar : General)**:** @[Mr. President, I congratulate Dr. Ambedkar and other members of the Drafting committee for preparing this Draft Constitution with so much labour and industry after our country had achieved its freedom.... Article 17 provides for the abolition of untouchability for which I congratulate the Drafting Committee.... ‡Article 338 refers to justice for the Scheduled Castes. Mr. President, I wish to tell you that the position of Harijans in the services hitherto is as follows :

C. P. & BERAR

			Population (1931 Census)	Gazetted posts
(1)			(2)	(3)
Brahmans	...	...	.5,42,556	448
Marathas & others	...	...	.18,82,654	17
Scheduled Castes	...	...	.30,51,413	3
Muslims	...	...	.7,83,697	99
Sikhs	....	...	.14,996	13
				580

Honourable Shri B. G. Kher gave the following figures in reply to a question in the Bombay Legislative Assembly by Shri R. M Nalwade :—

Community		Population in 1931	No. of Gazetted Officers	No. of Non-Gazetted Officers *i.e.* Clerks
(1)		(2)	(3)	(4)
Depressed classes	...	18,55,148	14	8,201
Marathas & others	...	42,07,159	606	43,360
Brahmans	...	9,18,120	1,370	21,448
Muslims	...	19,20,368	201	13.797
Others	...	...	.886	18,658

*CAD, Official Report, Vol. XI, 24th November 1949, p. 914.

† *Ibid.,* p. 915.

@Translation of Hindustani speech.

‡ *Ibid.,* p. 916.

This demonstrates clearly the necessity of making some provision assuring that such injustice will not continue any more, and there would be speedy action to end it. I request the Government of India and the provincial Governments to apply article 338 for our welfare and recruit Harijans in the services according to their population....

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***Shri Ram Chandra Gupta** (United Provinces : General) **:** Sir, I am very thankful to you for giving me this opportunity of speaking for a few minutes on this motion. The present Constitution will go down, in the annals of this nation, as a great "CHARTER OF FREEDOM", which our people have today achieved after a long and ceaseless struggle and much suffering. We have therefore every reason to be proud of it; and I have no manner of doubt posterity will continue to remember January 26th, 1950 as the sacred day when real freedom dawned in this country.

This Constitution which consists of nearly 400 clauses is the result of 3 year long hard labour, anxious thought, and much compromise. The country will no doubt feel grateful to all those who have had a hand in the shaping of this Constitution. Our thanks are due to all members of the Drafting Committee—particularly to Dr. Ambedkar, and to you, Sir, Both of you have demonstrated how accommodating you can be to others.

The Constitution, as it stands today, is the result of heated discussion and long debates carried over thousands of amendments moved by the honourable Members of this House. In fact there is not a single word in the Constitution which has not received the notice of some Member or the other. I can go to the length of stating that even punctuations, *viz.,* comma, semi colon, and full stops, have received due notice from our vigilant friend, Mr. Naziruddin Ahmad. It is true that unanimity could not be achieved on every matter, but there is no doubt that all clauses passed by the House always had the support of a very large majority. Almost all the important controversial questions were postponed many times for fuller consideration and the achievement of unanimity, if possible.

In one word, I can say that the present Constitution is the result of many happy compromises effected as a consequence of the spirit of 'give and take' so liberally manifested by the Members of this House. In such circumstances you cannot expect that all the Members will have the same degree of satisfaction on all matters incorporated in the Constitution. This really explains the mixed reaction accorded to the Constitution by the various speakers. While I myself do not agree with every thing incorporated

*CAD, Official Report, Vol. XI, 24th November 1949, pp. 919-920.

in the Constitution, I can say without the slightest fear of contradiction, that it has the substantial support of a very substantial section of this House.

It is no doubt true that the Constitution as originally drafted has undergone a radical change. Such a change was inevitable under the altered conditions of the country....

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*GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

Mr. President : The first thing today is to take up the Bill of which notice has been given by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) **:** Sir, I move for leave to introduce a Bill further to amend the Government of India Act, 1935.

Mr. President : The question is :—

'That leave be given to introduce a Bill further to amend the Government of India Act, 1935.'

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.

Mr. President: The Bill is introduced.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

Mr. President : Motion moved.

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The motion was adopted.

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†**The Honourable Dr. B. R. Ambedkar :** Sir, I am sure that there is some confusion in the mind of my friend Mr. Naziruddin Ahmad, as I find by reference to the various Acts that are passed by the Constituent Assembly the proposal in the Bill that it should be called the Fourth Amendment Act is the proper wording. The first Act that was passed by the Constituent Assembly is called the Government of India (Amendment) Act, 1949. The second one is called the Government of India I (Second Amendment) Act, 1949, which deals with the removal of prisoners from one unit to another unit. The third Amendment Act, 1949, deals with evacuee property, and the Bengal election.

Mr. Naziruddin Ahmad : It is not called an Amendment Act at all, it has got a different name.

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*CAD, Official Report, Vol. XI, 25th November 1949, p. 920.

† *Ibid.,* 25th November 1949. p. 923

‡ *Ibid.,* pp. 927-929.

The Honourable Dr. B. R. Ambedkar : If you look at clause 1, there you will see, "This Act may be called the Government of India (Second Amendment) Act, 1949." The next one is called the third Amendment Act, 1949, which deals with the custody, management and disposal of evacuee property and the election in West Bengal.

The confusion, I think, has arisen from the fact that we have passed two other Acts in the Constituent Assembly, one relating to the Abolition of Privy Council Jurisdiction and another amending the Central Government and Legislature Act, 1946. Those Acts are not amendments of the Government of India Act, at all. Although those Acts may have indirect effect on the Government of India Act, they are not amendments to the Government of India Act. We are, therefore, entitled to class this as the Fourth Amendment, because, so far as direct amendment of the Government of India Act, 1935 is concerned, this Assembly has passed only three Acts and no other.

Mr. Naziruddin Ahmad : But there is no Third Amendment Act, at all.

The Hounourable Dr. B. R. Ambedkar : Of course there is. The third Act deals with the custody, management and disposal of evacuee property. I have got the Act here before me.

Mr. President : There seems to be a little confusion about this matter. Fourth is not the number of the Act. what is described here is the fourth amendment of the Act. That is not the number of the Act itself. The number of the Act is separate.

The Honourable Dr. B. R. Ambedkar : It is a description of the present Act. It is a short title.

Mr. President : It is only a description. The number will be Act No. 6 of 1949.

The Honourable Dr. B. R. Ambedkar : That is so. This is a short title.

Mr. President : The constituent Assembly has passed five Acts upto now, in 1949 and this will be the sixth. But so far as amendments are concerned, it is the fourth amendment to the Government of India Act, and therefore it is called the Fourth amendment.

Pandit Hirday Nath Kunzru (United Provinces : General) **:** If out of the five Acts that we have already passed....

Mr. President : This is the sixth.

The Honourable Dr. B. R. Ambedkar : We have passed in this Assembly five Acts. Out of them two have nothing to do with any amendment of the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : Why were they placed before the Constituent Assembly if they were not of a constitutional character?

The Honourable Dr. B. R. Ambedkar : The short title is quite different from the purport of the Act.

Pandit Hirday Nath Kunzru : The question is whether the right of a litigant to appeal to the Privy Council could have been taken away without an amendment to the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar : The short title of the next Act was the Central Government and Legislature Amendment Act, 1949. that Act sought to amend the India (Central Government and Legislature) Act, 1946 which is an Act of Parliament and not the Government of India Act, 1935. The other Act was the abolition of Privy Council jurisdiction Act, 1949.

Pandit Hirday Nath Kunzru : But the earlier Act to which my honourable Friend has referred, namely, the Amendment to the Central Legislature Act was itself an amendment of the Government of India Act.

The Honourable Dr. B. R. Ambedkar : No, no, that is not, there was a separate Act passed by Parliament called the India (Central Government and Legislature) Act 1946. This amendment was an amendment to that Act. That Act was outside the Government of India Act, 1935.

Shri R. K. Sidhva : Perhaps Dr. Ambedkar will remember that the amendment to the Act from Cotton Seeds to Cotton was really an amendment to the Government of India Act, to which he has made no mention.

The Honourable Dr. B. R. Ambedkar : This would mean a sixth Act no doubt but the short title is something quite different to the number of the Acts. We are discussing the short titles.

Shri T. T. Krishnamachari (Madras : General) **:** This is a matter of nomenclature and in fact in the previous Acts amended by Parliament, they have given different names for Acts which in purport amended the Government of India Act, such as the India Burma Emergency Powers Act, 1942. The matter of nomenclature need not be pursued to its logical and bitter end. I suggest the House to proceed with the consideration of the Bill.

Mr. Naziruddin Ahmad : Is there any Act No. IV?

Mr. President : There seems to be.

The Honourable Dr. B. R. Ambedkar : There is.

Mr. Naziruddin Ahmad : I have not got it.

The Honourable Dr. B. R. Ambedkar : If you have not a copy, what can we do ?

Mr. President: After all, nothing will turn upon the title !

The Honourable Dr. B. R. Ambedkar : I can give him the number also, if he wants it.

Act No. I of 1949 is called by the short title of "The Government of India (amendment) Act 1949."

Act No. II of 1949 is called "The Government of India (second amendment) Act, 1949."

Act No. III of 1949 is called "The India (Central Government and legislature) Amendment Act, 1949."

Act No. IV of 1949 is called "The Government of India (Third Amendment) Act, 1949."

Act No. V of 1949 is called "The abolition of Privy Council Jurisdiction Act, 1949."

Acts III and V have nothing to do with the Govenment of India Act, 1935 and that is why we call this the fourth Amendment of the Government of India Act.

Mr. President : The question is :

"That in sub-clause (1) of clause 1, for the words 'Fourth Amendment' the words 'Third Amendment' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That clause 1 do stand part of the Bill,"

The motion was adopted.

Clause 1 was added to the Bill.

Clause 2

***Mr. Naziruddin Ahmad :** Sir, I beg to move:

"That clause 2 be deleted."

Sir, I also beg to move :

"That in clause 2, the following statute reference be appended :

'52 & 53 vict., C.63.' "

* * * * *

†The Honourable Dr. B. R. Ambedkar : All that I can say is that this is the uniform clause that has been passed by this Assembly in the other Acts amending the Government of India Act, therefore, in order to keep up the uniformity and to provide for the interpretation of this particular Act, clause 2 is a very necessary part of the Bill.

*CAD, Official Report, Vol. XI, 25th November 1949, p. 929.

†*Ibid.,* p. 929.

With regard to the suggestion of my friend all that it means is that there should be a marginal note giving the chapter number of the Interpretation Act of 1889. That is a matter for the draftsman to consider, and if he thinks such a marginal note is necessary, he will no doubt consider the matter. But this marginal note is not added against the clause of the other Acts which amend the Government of India Act of 1935.

Mr. Naziruddin Ahmad : Although Dr. Ambedkar says that in all the previous Acts this clause appears, yet I beg to point out that in Act No. V, there is no such clause. I pointed out the omission but I was over-ruled.

The Honourable Dr. B. R. Ambedkar : That was a self-contained Act. It required no reference to the Interpretation Act at all.

[The amendments of Naziruddin Ahmad were negatived and clause 2 was added to the Bill.]

* * * * *

Clause 3

***Shri H. V. Pataskar :** Sir, I move :

"That in clause 3, after the words 'alter the name of any Province' the words 'after ascertaining the opinion of the members of the Legislature of the province whose name is proposed to be changed' be added."

* * * * *

†The Honourable Dr. B. R. Ambedkar : Sir, dealing first with the amendment of Mr. Pataskar, I am afraid I must point out that it would not fit in within the framework of section 290. My friend does not seem to have noticed that to the various sub-clauses of clause (*1*) of section 290 there is a general proviso which applies to all the sub-clauses *(a), (b), (c)* and *(d).* If he refers to that proviso he will find that his amendment would introduce double conditions for the operation of the new clause, namely sub-clause *(e)*. Sub-clause *(e)* would be subject to the condition he wants to lay down in his amendment, namely, 'after ascertaining the opinion of the members of the legislature of the province whose name is proposed to be changed'. In addition to that, sub-clause *(e)* would also be governed by the proviso, namely that the Governor-General shall ascertain the views of the Government of the province. In view of this there would arise a very difficult condition, according to his amendment, the Governor-General will be bound to ascertain the wishes of the legislature. According to the proviso to section 290, he will be bound to ascertain the views of the Government of the province. He will therefore put himself in a double

*CAD, Official Report, Vol. XI, 25th November 1949, p. 930.

† *Ibid.,* pp. 935-937.

difficulty by reason of the fact that the Governor-General will have to consult two different bodies, that is not going to be a very easy matter. Secondly, he would realise that it is not quite justifiable that sub-clauses *(a)* to *(d)* should be governed by a single proviso, while the new sub-clause *(e)* should be governed by two provisions.

Shri H. V. Pataskar : That is not so.

The Honourable Dr. B. R. Ambedkar : That is what I say. How do you know? Therefore it seems to me that he is putting himself and the Governor-General in a somewhat difficult position by making such a suggestion. Do not therefore think that at this stage it would be logical to accept it, whatever be the merits of the suggestion.

Coming to the amendment of my friend, Mr. Sidhava, he seems to me to have completely confused the intention of this article and the provisions contained in the new Constitution. He speaks of Parliament and requires that the order made by the Governor-General be placed within three days of its making before Parliament. Mr. Sidhva has evidently forgotten that, when he speaks of the Parliament, he speaks of the legislature which comes into being on the 26th January 1950. On that date the Governor-General disappears, and this section 290 as well as the sub-clause *(e)* which I am trying to introduce by this measure will also disappear. On the 26th January what will be on the Statute Book and operative would be the provisions contained in article 3 of the new Constitution. He has, I am sorry to say, not paid sufficient attention to the point that I have sought to make.

Shri R. K. Sidhva : What the Governor-General does will be binding upon the President.

The Honourable Dr. B. R. Ambedkar : It seems to me that both these suggestions are impracticable. As to the general proposition whether Parliament should be brought in or not, we have to deal with two matters. One is that there is a general desire on the part of some of the provinces that the names by which they have been called under the Government of India Act 1935 do not smell sweet according to them, and they would like to begin with the names which they think are good enough for them on the date on which the Constitution commences. The Constituent Assembly felt at the time when the matter was discussed last time that this desire of some of the provinces whose names are not good enough in their own opinion has a good case and therefore a provision ought to be made for the Governor-General before the commencement of this Constitution to take such action as he thinks necessary to carry out the

desires of the provinces. Therefore it seems to me that such a provision is necessary.

A certain amount of fear has been expressed that some provinces might suggest to the Governor-General names which may not be possible in the opinion of the other provinces, and consequently names which have been rejectd by this House or disapproved by this House may be given to the new provinces without the knowledge of this Constituent Assembly or without the consent of the provincial legislatures concerned. It seems to me that that sort of suggestion is reading too much into section 290 as amended by this Bill because under section 290 the Governor-General has absolute discretion in this matter and is not bound to act upon the suggestion made either by the Provincial Government or, if I accept the amendment of Mr. Pataskar, the opinion of the legislature. He is free to act and the only authority who is to advise him to act is the Cabinet at the Centre. All that is required under section 290 is to ascertain the views of the Government of the Province. That does not mean that the Governor-General is bound to accept any name that has been suggested. I am quite certain in my own mind that the discussion that has taken place in this House, the opinions expressed by this House on the suggestion made by Professor Saksena in regard to the name of the United Provinces will be taken into consideration by the Central Executive and by the Governor-General before he decides to take any action under the proposed amendment to article 290.

Mr. President : I will now put the amendments to the vote. Mr. Naziruddin Ahmad, do you want your amendment to be put to the vote? It is only a matter of punctuation?

Mr. Naziruddin Ahmad : It may be left to the Drafting committee.

The Honourable Dr. B. R. Ambedkar : It is a worng amendment.

[Clause 3, Preamble and the title were adopted and added to the Bill.]

***The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed."

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The motion was adopted.

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*CAD, Official Report, Vol. X, 25th November 1949, p. 937.

DRAFT CONSTITUTION—*(contd.)*

***Mr. Frank Anthony** (C. P. & Berar : General) : Mr. President, sir, first of all I wish to thank you for the unfailingly courteous and gracious manner in which you have invariably presided over the deliberations of this House. Deserving tribute has already been paid to the Drafting Committee for the way in which it has performed its arduous and responsible duties. I would like very briefly to pay a particular tribute to my honourable Friend, who is sitting on my right, Dr. Ambedkar. I do not believe that any one of us can really gauge the volume of work and the intensity of concentration that must have been involved in the production of this voluminous and by no means easy document. And while, on occasions, I may not have agreed with him, it always gave me the very greatest pleasure to listen to his tremendous grasp not only of fundamentals but of details, of the clarity with which he invariably presented his case. It has been said that this Constitution has received a mixed reception. It is inevitable that its reception should have been mixed because, inevitably, it is a mixed Constitution. It is composite in character. I believe that it is a blend and a proper blend between idealism on the one side and realism on the other. I know that some of my ardently idealistic friends have criticised it. They would like to have seen instead of this blend something in the nature of a decalogue or the Ten Commandments, something which was so wholly idealistic that it would have wilted and died under the first impact of administrative realities and political difficulties.

As I have said, I believe that we have borrowed enough from idealism to make the Constitution a fairly attractive and an aspiring document and on the other hand we have not based it entirely on material, from mundane considerations so as to retard or in any way to take away from this the inspiring elements. I realize, Sir, that it is not a perfect document, but at the same time I feel that in hammering it out, we have traversed all the processes of the democratic manufactory, that we have ranged through the whole gamut of democratic factors; there has been careful thought; there has been close analysis; there has been argument and counter-argument; there has been fierce controversy and at one time I thought that the controversy was so fierce that we might reach the stage of what the Romans called *Argumentum ad baculum* that is, settling it by actual physical force. But in the final analysis has pervaded a real sense of accommodating and a real feeling of forbearance....

*CAD, Official Report, Vol. X, 25th November 1949, pp. 938-939.

*...May I end on this note—I believe that by and large we have hammered out a good Constitution. It will be fallible and it will be necessarily imperfect as it is the product of imperfect human beings. But I believe we have done a good job of work and I believe that this Constitution deserves not only our good wishes but our blessings. But in sending it out on its mission with these blessings, I feel that the paramount consideration which should be before us permanently is not that we have framed a voluminous and important document—not that we have sought to give careful and elaborate guarantees to minorities, but that ultimately the final test by which this Constitution will be judged and by which it will stand or fall, the final test will be the intention and the spirit with which the provisions of this Constitution are worked.

†**Dr. Pattabhi Sitaramayya :** ...Finally let me ask you :— "What after all is a constitution ?" It is a grammar of politics, if you like, it is a compass to the political mariner. However good it may be, by itself it is inanimate, it is insensitive, and it cannot work by itself. It is of use to us only in the measure in which we are able to use it, because it has tremendous reserve force, and everything depends upon the manner in which we approach it, whether we observe the letter and ignore the spirit or whether we observe both the letter and the spirit in equal measure. The words of the lexicon are the same, but they give rise to different styles of composition with different authors. The tunes and the notes are the same, but they give rise to different music with different singers. The colours and the brushes are the same, but they are rendered into different pictures by different painters. So it is with a constitution. It depends upon how we work....

‡...When all is said and done, we must realize how much we owe to the half a dozen men that have fashioned this Constitution and given it a shape and form. Our friend, Dr. Ambedkar, has gone away, else I should have liked to tell him what a steam-roller intellect he brought to bear upon this magnificent and tremendous task : irresistible, indomitable, unconquerable, levelling, down tall palms and short poppies : whatever he felt to be right he stood by, regardless of consequences.

Then there was Sir Alladi, with his oceanic depths of learning, and a whole knowledge of the Constitutional Law of the world on his finger tips. He has made great contribution towards the drawing up of this

*CAD, Official Report, Vol. X, 25th November 1949, p. 942-943.

†*Ibid.,* p. 945.

‡*Ibid,* pp. 946-947.

Constitution. He only has to perfect it all by writing a commentary upon it. That was the latest request of Mr. Santhanam to him and I hope he will fulfil it.

Then we have Mr. Gopalaswami Ayyangar : coy as a maiden and unobtrusive, but rising to the full heights of the necessities of the occasion, combining always the real with the ideal, and bringing a soft and kindly judgment on to a severe issue.

Next you have Mr. Munshi, the like of whom we cannot see for his resiliency and receptivity; his wide and varied knowledge, his sharp intellect and his ready resourcefulness have been a tremendous aid to us.

Mr. Madhava Rao is not here now. He was a Diwan of Mysore, he had laboured hard in our committee. He had vast experience from that of an Assistant Commissioner, Mysore, when I was still in my medical studies, until he became Diwan. He too has done his good bit in this work.

Then there is a man, who is almost unnoticed, and whose name has not been mentioned by any of my friends, to whom I would like to refer, the sweet and subdued Sa'adulla, who has brought a rich experience to bear upon the deliberations of this House.

Finally, comes the slim, tall man, who sits opposite to me, with his ready and rapier thrusts of repartee and rejoinder, whose sharp-pointed intellect always punctures or lacerates the opposition. But he is always able to cover up the injury with his plastic surgery and recuperative powers : and that is Mr. T. T. Krishnammachari.

We have all had the help of these people, but, Sir, the work of all these friends would have been of no use but for the sweetness, the gentleness, with which you turned towards a person when you wanted him to stop in his further speaking : the patience with which you waited in order to catch his eye,—not he to catch your eye,—and the very gentle manner in which you cast the hint that he should now wind up; and when some of us were rebellious, disorderly and chaotic, you simply smiled in order to choke that attitude.

It is a great thing I tell you that we have achieved. It is not right to under-estimate what we have achieved. Much has been done behind the curtains and but for the discipline and drilling of the majority party in this House, these deliberations would not have come to this happy end.

I thank you all for the great task that you have achieved and I congratulate you on it.

All that remains for me to say is that this Constitution is a good enough constitution for us to begin with. Work it, work upon it : work at it : work it out for all that you are worth and as the great Parliamentarian said in the seventies of the 19th Century when the franchise was developed, in the British House of Commons, say to yourselves. "Let us educate our Masters."

***Shri Jagat Narain Lal :** ...In the end, I wish to pay my high tributes both to the Chair, or President, and to the members of the Drafting Committee, particularly to Dr. Ambedkar, Mr. Munshi and Mr. Krishnamachari amongst many others.

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†Shri T. T. Krishnamachari : Mr. President, Sir, at the outset I would like to express the thanks of the Drafting Committee to the members of this Honourable House, who, whatever their views might be on certain provisons of this Constitution, have, practically, one and all, paid tributes, to the work of the Drafting Committee—and, Sir, not the least of them all to my septuagenarian leader who in such kind terms singled out every member of the Drafting Committee for recognition of his services, which I think we would all cherish to the end of our lives....

...‡But I am coming to the most vital portion of the manner in which the structure of the Constitution was undertaken. Honourable Members must realize that this Constitution as it has been mentioned by other members—before me is a result of compromise. 296 people who have assembled here hold different views on economic matters and we cannot frame a Constitution in which if I say that I am not going to allow a particular thing to be done and other people must follow that, then there will be no agreement. The whole Constitution practically—very important parts of this Constitution have been a matter of final agreement among the parties concerned and if anybody now objects to a single proposition after having agreed to most of the propositions. I am afraid they are doing something which is not proper. This Constitution has been completed as a result of agreement amongst most of us....

@Shri Mahavir Tyagi : Sir, I am grateful to you for giving me this apportunity.

Sir, I assure you these four or five minutes granted by you are the most precious of my life, past, present and future, and they are the most thrilling

*CAD, Official Report, Vol. X, 25th November 1949, p. 948.

†*Ibid.,* p. 949.

‡*Ibid.,* p. 960.

@*Ibid.,* p. 963.

moments. I stand today face to face with the picture of my old, old dreams and the fruits of my strenuous labours of thirty years. A concrete picture is before us. Dr. Ambedkar who was the main artist has laid aside his brush and unveiled the picture for the public to see and comment upon. The House has already liberally commented on it. It is a picture drawn by us all and I do not want to enter into a further commentary about it. I am in support of whatever has been said in favour of this picture, and I fully support it. After all, in all sincerity and humility we must bequeath to our posterity whatever is best in us, we have put in our best labour and given our best thought to it, and after a lot of discussions and deliberations we have arrived at this picture. We must now wholeheartedly bequeath it to posterity in the hope that they will forgive our shortcomings if any, and will make up these shortcomings with their wisdom. From the corner of my eye as I see it, and as also the world will see, the picture is also fraught with dangers....

***Shri Suresh Chandra Majumdar :** ...In conclusion, may I offer my respectful congratulations to Dr. Ambedkar and to my elders and colleagues in this House on the successful performance of a great, arduous and historic task ?. And I am sure I am echoing the sentiment of everyone here when I thank you, Mr. President, for the calm, patient, courteous and altogether exemplary manner in which you have guided the deliberations in this House. Jai Hind ! Vande Mataram !!

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†Shri Raj Bahadur (Rajasthan) **:** Mr. President, Sir, I am grateful to you for giving me this opportunity to associate myself with the high and well-deserved tributes that have been showered upon your good self, upon the Drafting Committee and the members of the staff of the Constituent Assembly. This is an occasion of the greatest historical significance. I say of the greatest significance because it is for the first time in our history that the chosen representatives of the nation have gathered together and framed a constitution for the country. It is doubly so because the great and worthy leaders who brought freedom to our country have been the architects of our Constitution....

...‡ I would simply add at the end that whatever be the merits or the demertis of this Constitution, every thing depends upon the working of it. As Bryce has said, "it is easy to transplant a constitution but

*CAD, Official Report, Vol. X, 25th November 1949, p. 966.

†*Ibid.,* p. 969.

‡*Ibid.,* p. 970.

it is not easy to transplant the temperament that is needed for the working of it."

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***The Honourable Dr. B. R. Ambedkar :** Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constitutent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution, as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the house were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint ? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787 *i.e.,* within four months. The

*CAD, Official Report, Vol. X, 25th November 1949, pp. 972-981.

Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October 1908 and the Constitution became law on the 20th September 1909 involving one year's labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution, as I said, contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratualate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the other hand, the Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmad has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drifting Committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without

mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmad did not mean it as a compliment to the Drafting Committee, I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if it had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituted Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country. *(Cheers.)*

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity to devise new formulae and capacity to tolerate and to accommodate different points of view,

the task of framing the Constitution could not have come to so successful a conclusion. Much greater share of the credit must go to Mr. S. N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been an acquisition to the Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee, for, I know how hard they have worked and how long they have toiled, sometimes even beyond midnight. I want to thank them all for their effort and their co-operation. *(cheers.)*

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motely crowd, a tasseleted pavement without cement, a black stone here and a white stone there in which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of 'yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P. S. Deshmukh, Mr. Sidhva, Prof. Sexena and Pandit Thakur Das Bhargava. Along with them I must mention Prof. K. T. Shah and Pandit Hirday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the

consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution-making.

As much defence as could be offered to the Constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr. T. T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave ? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them ? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution ? Is it because it is really a bad Constitution ? I venture to say 'no.' The Communist Party wants a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an overstatement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution ? I say why blame even the Members of the Constituent Assembly ? Jefferson, the great American statesman who played so great a part in the making of the American Constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore. In one place, he has said :—

> "We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."

In another place, he has said :

> "The idea that institutions established for the use of the nation cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself, Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter ; in fine, that the earth belongs to the dead and not the living;"

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constitutent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it ? Quite the contrary. One has only to examine the provision relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent

Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-third majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary. For as has been well said :

> "Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authrority powers explicitly granted to another."

The first charge of centralisation defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding powers to the Centre when an emergency has arisen ? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that wellknown magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer :

> "Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen, Is it the Centre or the Constituent State ?"

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the constituent States by these emergency powers ? No more than this—that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country *(Cheers)*. What would happen to her independence ? Will she maintain her independence or will she lose it again ? This is

the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time ? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Ghori to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself ? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or will they place creed above country ? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood. *(Cheers.)*

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution ? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there

were Parliaments—for the Sanghas were nothing but Parliaments—but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, *Res Judicata,* etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lose it a second time ? I do not know, but it is quite possible in a country like India—where democracy from its long disuse must be regarded as something quite new—there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do ? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions." There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, 'no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty.' This caution is far more necessary in the case of India than in the case of any other country, for in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics

unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean ? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In Politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions ? How long shall we continue to deny equality in our social and economic life ? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity. What does fraternity mean ? Fraternity means a sense of common brotherhood of all Indians—if Indians being one people. It is the

principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James Bryce in his volume on American Commnowealth about the United States of America.

The story is—I propose to recount it in the words of Bryce himself—that—

> "Some years ago the American Protestant Episcopal Church was occupied at its triennial convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words 'O Lord, bless our nation'. Accepted one afternoon on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word 'nation' as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words 'O Lord, bless these United States'."

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically-minded Indians resented the expression "the people of India". They preferred the expression "the Indian nation." I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation ? The sooner we realize that we are not as yet a nation in the social and psychological sense of the word, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult—far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.

These are my reflections about me tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are not only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed, they are

impatient to govern themselves. This urge for self-realization in the downtrodden classes must not be allowed to develop into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a house divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stress on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of government by the people. They are prepared to have Government for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

Mr. President : The House will adjourn till Ten of the clock tomorrow morning when we shall take up the voting on the motion which was moved by Dr. Ambedkar.

The Assembly then adjourned till ten of the Clock on Saturday, the 26th November, 1949.

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(ADOPTION OF THE CONSTITUTION)

***President (Dr. Rajendra Prasad) :** ...Before I close, I must express my thanks to all the Members of this August Assembly from whom I have received not only courtesy but, if I may say so, also their respect and affection. Sitting in the chair and watching the proceeding from day to day, I have realised as nobody else could have, with rare what zeal and devotion the members of the Drafting committee and especially its Chairman, Dr. Ambedkar, in spite of his indifferent health, have worked. *(Cheers).* We could never make a decision which was or could be ever so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work which he has done. In this connection, it would be invidious to make any distinction as among the other members of the Committee. I know they have all worked with the same zeal and devotion as its Chairman, and they deserve the thanks of the country....

All deserve my thanks as I have received courtesy, co-operation and legal service from all. *(Prolonged cheers).*

It now remains to put the motion which was moved by Dr. Ambedkar, to the vote of the House. The question is :

"That the Constitution as settled by the Assembly be passed."

The motion was adopted. (*Prolonged Cheers*).

[President then authenticated the Constitution. The House gave authority to the President to call another session in January 1950 by a voice vote. The honourable Members then shook hands with Mr. President one by one.]

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(The Constituent Assembly had also legislative functions. These legislative functions encompassed usual parliamentary business, including amendments to various laws. Dr. Ambedkar's speeches relating to those legislations including the Hindu Code Bill, as distinguished from the framing of India's Constitution, are included in the next volume—Vasant Moon)

*CAD, Official Report, Vol. XI, 26th November 1949, p. 994.

Tabular statement showing articles of the Constitution of India, with corresponding clauses in the Draft Constitution and dates on which they were discussed and approved.—

ARTICLES OF THE CONSTITUTION OF INDIA

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
1 ...	1 ...	15th November, 1948, 17 November, 1948. 17th September, 1949, 18th September, 1949.
2 ...	2 ...	17th November, 1948.
3 ...	3 ...	17th and 18th November, 1948. 13th October, 1949.
4 ...	4 ...	18th November, 1948.
5 ...	5 ...	10th August, 1949, 11th August, 1949 and 17th August, 1949.
6 ...	5A ...	10th, 11th and 12th August, 1949.
7 ...	5AA ...	10th, 11th and 12th August, 1949.
8 ...	5B ...	10th, 11th and 12th August, 1949.
9 (New) ...	... ...	29th November, 1949.
10 ...	5C ...	10th, 11th and 12th August, 1949.
11 ...	6 ...	10th, 11th and 12th August, 1949.
12 ...	7 ...	25th November, 1948.
13 ...	8 ...	25th, 26th and 29th November, 1948.
14 (New) ...	... ...	29th November, 1948.
15 ...	9 ...	29th November, 1948.
16 ...	10 ...	30th November, 1948.
17 ...	11 ...	29th November, 1948.
18 ...	12 ...	30th November, 1948 and 10th December, 1948.
19 ...	13 ...	1st and 2nd December, 1948. 16th October, 1949 and 17th October, 1949.
20 ...	14 ...	2nd, 3rd and 6th December, 1948.
21 ...	15 ...	6th and 13th December, 1948.
22 ...	15A ...	16th September, 1949.
23 ...	17 ...	3rd December, 1948.
24 ...	18 ...	3rd December, 1948.
25 ...	19 ...	3rd and 6th December, 1948.
26 ...	20 ...	7th December, 1948.
27 ...	21 ...	7th December, 1948.
28 ...	22 ...	7th December, 1948.
29 ...	23 ...	7th and 8th December, 1948.
30 ...	23A ...	7th and 8th December, 1948
31 ...	24 ...	10th September, 1949 and 12th September. 1949.
32 ...	25 ...	9th December, 1948.
33 ...	26 ...	9th December, 1948.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
34 (New) ...	... ...	...
35 ...	27 ...	9th and 16th December, 1948 and 16th October, 1949.
36 ...	28 ...	19th November, 1948.
37 ...	29 ...	19th November, 1948.
38 ...	30 ...	19th November, 1948.
39 ...	31 ...	22nd November, 1948.
40 ...	31A ...	22nd November, 1948.
41 ...	32 ...	23rd November, 1948.
42 ...	33 ...	23rd November, 1948.
43 ...	34 ...	23rd November, 1948.
44 ...	35 ...	23rd November, 1948.
45 ...	36 ...	23rd November, 1948.
46 ...	37 ...	23rd November, 1948.
47 ...	38 ...	23rd November, 1948 and 24th November, 1948.
48 ...	38A ...	24th November, 1948.
49 ...	39 ...	24th November, 1948.
50 ...	39A ...	24th November, 1948 and 25th November, 1948.
51 ...	40 ...	25th, November, 1948.
52 ...	41 ...	10th, December, 1948.
53 ...	42 ...	10th, 16th December, 1948 and 16th October, 1949.
54 ...	43 ...	10th and 13th December, 1948.
55 ...	44 ...	13th December, 1948.
56 ...	45 ...	13th December, 1948.
57 ...	46 ...	13th December. 1948.
58 ...	47 ...	27th December, 1948 and 13th October, 1949.
59 ...	48 ...	27th December, 1948 and 14th October, 1949.
60 ...	49 ...	27th December, 1948.
61 ...	50 ...	28th December, 1948.
62 ...	51 ...	28th December, 1948.
63 ...	52 ...	28th December, 1948.
64 ...	53 ...	28th December, 1948.
65 ...	54 ...	28th December, 1948.
66 ...	55 (1) —(4) ...	28th December, 1948, 29th December, 1948 and 13th October, 1949.
67 ...	56 ...	29th December, 1948.
68 ...	55 (5) —(6) ...	28th December, 1948, 29th December, 1948 and 13th October, 1949.
69 (New) ...	... ...	November, 1949.
70 ...	57 ...	29th December, 1948.
71 ...	58 ...	29th December, 1948.
72 ...	59 ...	29th December, 1948 and 17th October, 1949.
73 ...	60 ...	29th December, 1948 and 30th December, 1948.
74 ...	61 ...	30th December, 1948.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
75 ...	62 ...	30th December, 1948, 31st December, 1948, 14th October, 1949 and 17th October 1949.
76 ...	63 ...	7th January, 1949.
77 ...	64 ...	7th January, 1949.
78 ...	65 ...	6th January, 1949 and 7th January, 1949.
79 ...	66 ...	3rd January, 1949.
80 ...	67(1)—(4) ...	3rd and 4th January, 1949 and 13th and 17th October, 1949.
81 ...	67(5)—(8) ...	3rd and 4th January, 1949, 10th, 14th and 17th October, 1949.
82 ...	67A ...	18th May, 1949; 23rd May, 1949 and 13th October, 1949.
83 ...	68 ...	18th May, 1949.
84 ...	68A ...	18th May, 1949.
85 ...	69 ...	18th May, 1949.
86 ...	70 ...	18th May, 1949.
87 ...	71 ...	18th May, 1949.
88 ...	72 ...	18th May, 1949.
89 ...	73 ...	19th May, 1949.
90 ...	74 ...	19th May, 1949.
91 ...	75 ...	19th May, 1949.
92 ...	75A ...	19th May, 1949.
93 ...	76 ...	19th May, 1949.
94 ...	77 ...	19th May, 1949.
95 ...	78 ...	19th May, 1949.
96 ...	78A ...	18th May, 1949 and 19th May, 1949.
97 ...	79 ...	19th May, 1949.
98 ...	79A ...	30th July, 1949.
99 ...	81 ...	19th May, 1949.
100 ...	80 ...	19th May, 1949.
101 ...	82 ...	19th May, 1949.
102 ...	83 ...	19th May, 1949 and 13th October, 1949.
103 ...	83A ...	1st August, 1949.
104 ...	84 ...	19th May, 1949.
105 ...	85 ...	19th May, 1949 and 16th October, 1949.
106 ...	86 ...	20th May, 1949.
107 ...	87 ...	20th May, 1949.
108 ...	88 ...	20th May, 1949.
109 ...	89 ...	20th May, 1949.
110 ...	90 ...	20th May, 1949 and 8th June, 1949.
111 ...	91 ...	20th May, 1949.
112 ...	92 ...	8th June, 1949, 10th June, 1949 and 13th October, 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
113 ...	93 ...	10th June, 1949.
114 ...	94 ...	10th June, 1949.
115 ...	95 ...	10th June, 1949.
116 ...	96 ...	10th June, 1949.
117 ...	97 ...	10th June, 1949.
118 ...	98 ...	10th June, 1949.
119 ...	98A ...	10th June, 1949.
120 ...	99 ...	17th September, 1949.
121 ...	100 ...	23rd May, 1949 and 13th October, 1949.
122 ...	101 ...	23rd May, 1949.
123 ...	102 ...	23rd May, 1949.
124 ...	103 ...	23rd May, 1949 and 24th May, 1949.
125 ...	104 ...	27th May, 1949 and 30th July, 1949.
126 ...	105 ...	27th May, 1949.
127 ...	106 ...	27th May, 1949.
128 ...	107 ...	27th May, 1949.
129 ...	108 ...	27th May, 1949.
130 ...	108A ...	27th May, 1949.
131 ...	109 ...	3rd June, 1949 and 14th October, 1949.
132 ...	110 ...	3rd June, 1949.
133 ...	111 ...	3rd June 1949, 6th June, 1949 and 16th October, 1949.
134 ...	111A ...	13th June, 1949 and 14th June, 1949.
135 ...	112B ...	...
136 ...	112 ...	6th June, 1949 and 16th October, 1949.
137 ...	112A ...	6th June, 1949.
138 ...	114 ...	6th June, 1949.
139 ...	115 ...	27th May, 1949.
140 ...	116 ...	27th May, 1949.
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142 ...	118 ...	27th May, 1949.
143 ...	119 ...	27th May, 1949.
144 ...	120 ...	27th May, 1949.
145 ...	121 ...	6th June, 1949.
146 ...	122 ...	27th May, 1949.
147 ...	122A ...	6th June, 1949 and 16th October, 1949.
148 ...	124 ...	30th May, 1949.
149 ...	125 ...	30th May, 1949.
150 ...	126 ...	30th May, 1949.
151 ...	127 ...	30th May, 1949.
152 ...	128 ...	30th May, 1949.
153 ...	129 ...	30th May, 1949.
154 ...	130 ...	30th May, 1949 and 16th October, 1949.
155 ...	131 ...	30th May, 1949 and 31st May, 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
156 ...	132 ...	31st May, 1949.
157 ...	134 ...	31st May, 1949.
158 ...	135 ...	31st May, 1949 and 14th October, 1949.
159 ...	136 ...	31st May, 1949.
160 ...	138 ...	1st June, 1949.
161 ...	141 ...	1st June, 1949 and 17th October, 1949.
162 ...	142 ...	1st June, 1949.
163 ...	143 ...	1st June, 1949.
164 ...	144 ...	1st June, 1949 and 14th October 1949.
165 ...	145 ...	1st June, 1949.
166 ...	146 ...	2nd June, 1949.
167 ...	147 ...	2nd June, 1949.
168 ...	148 ...	6th January, 1949.
169 ...	148A ...	30th July, 1949.
170 ...	149 ...	6th January, 1949, 7th January, 1949, 8th January, 1949 and 14th October, 1949.
171 ...	150 ...	2nd June, 1949, 30th July, 1949 and 19th August, 1949.
172 ...	151 ...	2nd June, 1949.
173 ...	152 ...	2nd June, 1949.
174 ...	153 ...	2nd June, 1949.
175 ...	154 ...	2nd June, 1949.
176 ...	155 ...	2nd June, 1949.
177 ...	156 ...	2nd June, 1949.
178 ...	157 ...	2nd June, 1949.
179 ...	158 ...	2nd June, 1949.
180 ...	159 ...	2nd June, 1949.
181 ...	159A ...	2nd June, 1949.
182 ...	160 ...	2nd June, 1949.
183 ...	161 ...	2nd June, 1949.
184 ...	162 ...	2nd June, 1949.
185 ...	162A ...	2nd June, 1949.
186 ...	163 ...	3rd June, 1949.
187 ...	163A ...	30th July, 1949.
188 ...	165 ...	2nd June, 1949.
189 ...	164 ...	2nd June, 1949 and 16th June, 1949.
190 ...	166 ...	2nd June, 1949.
191 ...	167 ...	2nd June, 1949.
192 ...	167A ...	14th June, 1949.
193 ...	168 ...	3rd June, 1949.
194 ...	169 ...	3rd June, 1949 and 16th October, 1949.
195 ...	170 ...	3rd June, 1949.
196 ...	171 ...	3rd June, 1949, 4th June, 1949 and 14th June, 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
197 ...	172 ...	30th July, 1949 and 1st August, 1949.
198 ...	173 ...	10th June, 1949.
199 ...	174 ...	10th June, 1949.
200 ...	175 ...	14th June, 1949, 31st July, 1949, 1st August, 1949 and 17th October, 1949.
201 ...	176 ...	1st August, 1949.
202 ...	177 ...	10th June, 1949.
203 ...	178 ...	10th June, 1949.
204 ...	179 ...	10th June, 1949.
205 ...	180 ...	10th June, 1949.
206 ...	181 ...	10th June, 1949.
207 ...	182 ...	10th June, 1949.
208 ...	183 ...	10th June, 1949.
209 ...	183A ...	10th June, 1949.
210 ...	184 ...	10th June, 1949 and 17th September, 1949.
211 ...	185 ...	10th June, 1949.
212 ...	186 ...	10th June, 1949.
213 ...	187 ...	14th June, 1949.
214 ...	191 ...	6th June, 1949.
215 ...	192 ...	6th June, 1949.
216 ...	192A ...	6th June, 1949.
217 ...	193 ...	6th June, 1949 and 7th June, 1949.
218 ...	194 ...	7th June, 1949.
219 ...	195 ...	7th June, 1949.
220 ...	196 ...	7th June, 1949.
221 ...	197 ...	7th June, 1949.
222 ...	198 ...	1st August, 1949.
223 ...	199 ...	7th June, 1949.
224 ...	200 ...	7th June, 1949.
225 ...	201 ...	7th June, 1949.
226 ...	202 ...	7th June, 1949 and 9th September, 1949.
227 ...	203 ...	7th June, 1949, 14th June, 1949, 15th June, 1949 and 16th October, 1949.
228 ...	204 ...	7th June, 1949 and 8th June, 1949.
229 ...	205 ...	8th June, 3949.
230 ...	207 ...	14th June, 1949.
231 ...	208 ...	14th June, 1949.
232 ...	209 ...	14th June, 1949.
233 ...	209A ...	19th June, 1949 and 16th September, 1949.
234 ...	209B ...	16th September, 1949.
235 ...	209C ...	16th September, 1949.
236 ...	209D ...	16th September, 1949.
237 ...	209E ...	16th September 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
238 ...	211A ...	12th October, 1949 and 13th October, 1949.
239 ...	212 ...	1st August, 1949.
240 ...	213 ...	1st August, 1949 and 2nd August, 1949.
241 ...	213A ...	2nd August, 1949 and 16th October, 1949.
242 ...	214 ...	2nd August, 1949.
243 ...	215 ...	16th September, 1949.
244 ...	215B ...	19th August, 1949.
245 ...	216 ...	13th June, 1949.
246 ...	217 ...	13th June, 1949.
247 ...	219 ...	13th June, 1949.
248 ...	223 ...	13th June, 1949.
249 ...	226 ...	13th June, 1949.
250 ...	227 ...	13th June, 1949.
251 ...	228 ...	13th June, 1949.
252 ...	229 ...	13th June, 1949.
253 ...	230 ...	13th June, 1949 and 14th October, 1949.
254 ...	231 ...	13th June, 1949.
255 ...	232 ...	13th June, 1949.
256 ...	233 ...	13th June, 1949.
257 ...	234 & 234A ...	13th June, 1949 and 9th September, 1949.
258 ...	235 ...	13th June, 1949 and 13th October, 1949.
259 ...	235A ...	13th June, 1949.
260 ...	236 ...	13th June, 1949 and 13th October, 1949.
261 ...	238 ...	13th June, 1949.
262 ...	242A ...	9th September, 1949.
263 ...	246 ...	13th June, 1949.
264 ...	247 ...	13th June, 1949 and 4th August, 1949.
265 ...	248 ...	4th August, 1949.
266 ...	248A ...	4th August, 1949 and 7th September, 1949.
267 ...	248B ...	4th August, 1949 and 13th October, 1949.
268 ...	249 ...	4th August, 1949 and 5th August, 1949.
269 ...	250 ...	5th August, 1949, 19th August, 1949 and 9th September, 1949.
270 ...	251 ...	5th August, 1949.
271 ...	252 ...	5th August, 1949.
272 ...	253 ...	5th August, 1949 and 8th August, 1949.
273 ...	254 ...	8th August, 1949.
274 ...	254A ...	8th August, 1949.
275 ...	255 ...	8th August, 1949 and 9th August, 1949.
276 ...	256 ...	9th August, 1949.
277 ...	257 ...	9th August, 1949.
278 ...	258 ...	13th October, 1949.
279 ...	259 ...	9th August, 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
280 ...	260 ...	9th August, 1949 and 10th August, 1949.
281 ...	261 ...	10th August, 1949.
282 ...	262 ...	10th August, 1949.
283 ...	263 ...	10th August, 1949, 9th September, 1949 and 13th October, 1949.
284 ...	263A ...	9th September, 1949.
285 ...	264 ...	9th September, 1949.
286 ...	264A ...	16th October, 1949.
287 ...	265 ...	9th September, 1949.
288 ...	265A ...	9th September, 1949.
289 ...	266 ...	9th September, 1949.
290 ...	267 ...	10th August, 1949.
291 ...	267A ...	13th October, 1949.
292 ...	268 ...	10th August, 1949.
293 ...	269 ...	10th August, 1949.
294 ...	270 ...	15th June, 1949 and 13th October, 1949.
295 ...	270A ...	13th October, 1949.
296 ...	271 ...	15th June, 1949.
297 ...	271A ...	15th June, 1949.
298 ...	272 ...	15th June, 1949.
299 ...	273 ...	15th June, 1949.
300 ...	274 ...	15th June, 1949.
301 ...	274A ...	15th June, 1949, and 8th September, 1949.
302 ...	274B ...	8th September, 1949.
303 ...	274C ...	8th September, 1949.
304 ...	274D ...	8th September, 1949.
305 ...	274DDD ...	8th September, 1949 and 13th October, 1949.
306 ...	274DD ...	8th September, 1949 13th October, 1949 and 16th October, 1949.
307 ...	274E ...	8th September, 1949.
308 ...	281 ...	7th September, 1949.
309 ...	282 ...	7th September, 1949.
310 ...	282A ...	7th September, 1949.
311 ...	282B ...	8th September, 1949.
312 ...	282C ...	8th September, 1949.
313 ...	283 ...	8th September, 1949.
314 ...	283A ...	10th October, 1949.
315 ...	284 ...	22nd August, 1949.
316 ...	285 ...	22nd August, 1949.
317 ...	285A ...	22nd August, 1949.
318 ...	285B ...	22nd August, 1949.
319 ...	285C ...	22nd August, 1949.
320 ...	286 ...	23rd August, 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
321 ...	287 ...	23rd August, 1949.
322 ...	288 ...	23rd August, 1949.
323 ...	288A ...	23rd August, 1949.
324 ...	289 ...	15th June, 1949 and 16th June, 1949.
325 ...	289A ...	16th June, 1949.
326 ...	289B ...	16th June, 1949.
327 ...	290 ...	16th June, 1949.
328 ...	291 ...	16th June, 1949.
329 ...	291A ...	16th June, 1949.
330 ...	292 ...	23rd and 24th August, 1949.
331 ...	293 ...	24th August, 1949.
332 ...	294 ...	24th August, 1949.
333 ...	295 ...	24th August, 1949.
334 ...	295A ...	24th August, 1949 and 25th August, 1949.
335 ...	296 ...	14th October, 1949 and 26th August, 1949.
336 ...	297 ...	16th June, 1949.
337 ...	298 ...	16th June, 1949.
338 ...	299 ...	26th August, 1949 and 14th October, 1949.
339 ...	300 ...	16th June, 1949.
340 ...	301 ...	16th June, 1949.
341 ...	300A ...	17th September, 1949.
342 ...	300B ...	17th September, 1949.
343 ...	301A ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
344 ...	301B ...	12th September, 1949, 13th September, 1949, and 14th September, 1949.
345 ...	301C ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
346 ...	301D ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
347 ...	301E ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
348 ...	301F ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
349 ...	301G ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
350 ...	301H ...	12th September, 1949, 13th September, 1949 and 14th September, 1949.
351 ...	301I ...	12th September, 1949, 13th September, 1949 and 14th September, 1949..
352 ...	275 ...	2nd August, 1949.
353 ...	276 ...	3rd August, 1949.
354 ...	277 ...	19th August, 1949 and 20th August, 1949.

Article in Constitution of India	Corresponding clause in the Draft Constitution	Dates on which discussed and approved
1	2	3
355 ...	277A ...	3rd August, 1949 and 4th August, 1949.
356 ...	278 ...	3rd August, 1949 and 4th August, 1949.
357 ...	278A ...	3rd August, 1949 and 4th August, 1949.
358 ...	279 ...	4th August, 1949.
359 ...	280 ...	4th August, 1949 and 20th August, 1949.
360 ...	280A ...	16th October, 1949.
361 ...	302 ...	8th September, 1949.
362 ...	302A ...	13th October, 1949.
363 ...	302AA ...	16th October, 1949.
364 ...	302AAA ...	17th October, 1949.
365 (New) ...	... ...	...
366 ...	303(1) ...	16th September, 1949, 17th September, 1949 and 14th October, 1949.
367 ...	303(2 & 3) ...	16th September, 1949, 17th September, 1949 and 14th October, 1949.
368 ...	304 ...	17th September, 1949.
369 ...	306 ...	7th October, 1949.
370 ...	306A ...	13th October, 1949 and 17th October, 1949.
371 ...	306B ...	13th October, 1949.
372 ...	307 ...	10th October, 1949.
373 (New) ...	... ...	...
374 ...	308 ...	10th October, 1949.
375 ...	309 ...	7th October, 1949.
376 ...	310 ...	10th October, 1949.
377 ...	310A ...	7th October, 1949.
378 ...	310B ...	7th October, 1949.
379 ...	311 ...	10th October, 1949 and 11th October, 1949.
380 ...	311A ...	7th October, 1949.
381 ...	311B ...	7th October, 1949.
382 ...	312 ...	7th October, 1949.
383 ...	312A ...	7th October, 1949.
384 ...	312B ...	7th October, 1949.
385 ...	312C ...	7th October, 1949.
386 ...	312D ...	7th October, 1949.
387 ...	312E ...	7th October, 1949.
388 ...	312F ...	4th October, 1949, 7th October, 1949 and 11th October, 1949.
389 ...	312G ...	7th October, 1949.
390 ...	312H ...	7th October, 1949.
391 (New) ...	... ...	...
392 ...	313 ...	7th October, 1949.
393 ...	313A ...	17th October, 1949.
394 ...	314 ...	17th October, 1949.
395 ...	315 ...	17th October, 1949.

Schedule	Date
1	... 14th October, 1949 and 15th October, 1949.
2	... 11th October, 1949 and 12th October, 1949.
3	... 26th August, 1949 and 16th October, 1949.
4 (Schedule III-A)	... 17th October, 1949.
5	... 5th September, 1949.
5 (Part D)	... 5th September, 1949.
6	... 5th September, 6th September and 7th September, 1949. Para 1, 5th September, 1949, Paras 2—15, 6th September, 1949 and paras 16—20, 7th September, 1949.
7	... 26th August. 1949, 29th August, 1949, 30th August, 1949, 31st August, 1949, 1st September, 1949, 2nd September, 1949, 3rd September, 1949, 9th September, 1949, 13th October, 1949 and 17th October, 1949.
8 (Schedule VII-A)	... 14th September, 1949.

●●●

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